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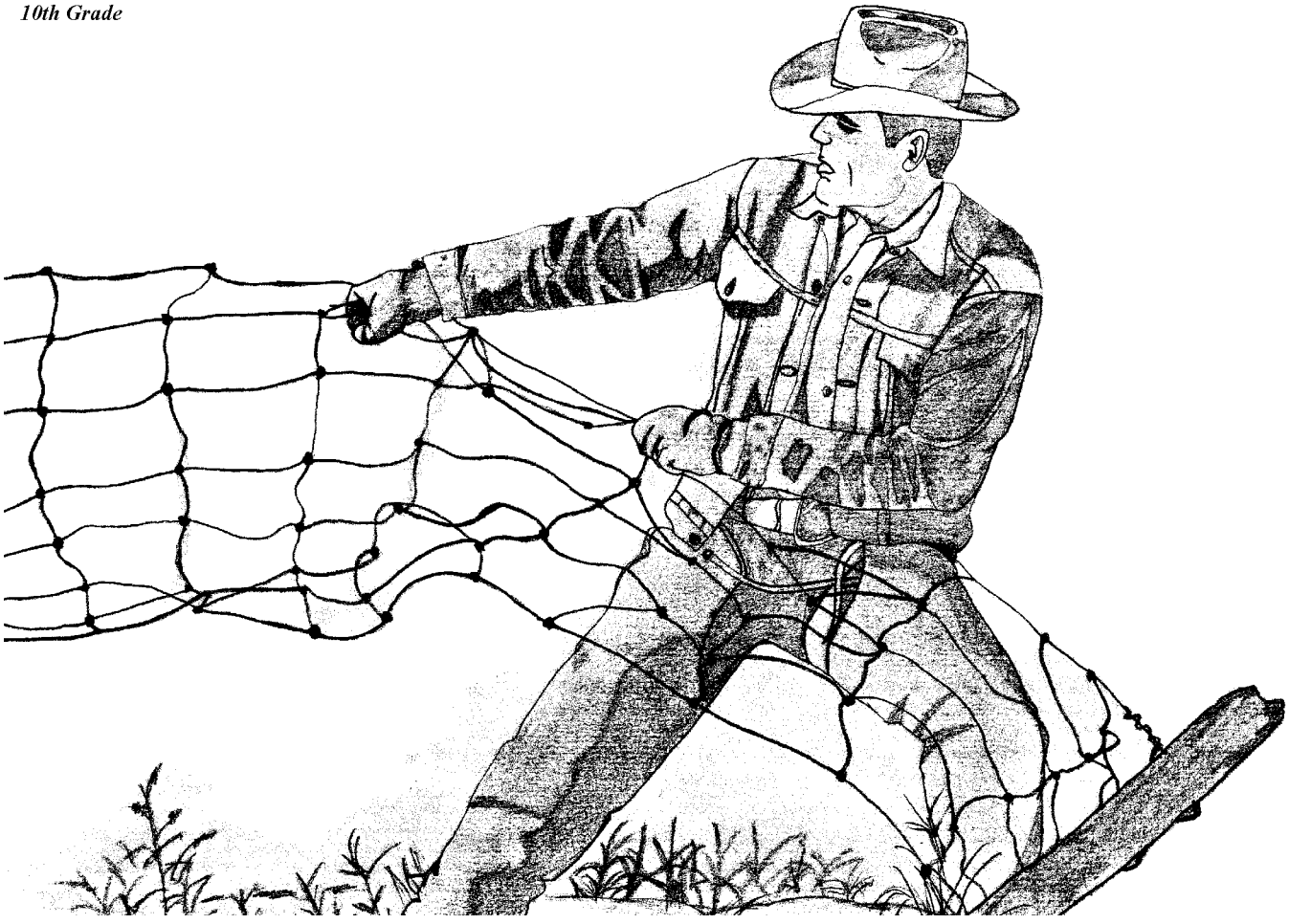
Eduardo Carren
10th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-2993

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, Section 411.173(b) of the Government Code of the State of Texas directs that the governor shall negotiate an agreement with any other state that provides for the issuance of a license to carry a concealed handgun under which a license issued by the other state is recognized in this state, or shall issue a proclamation that a license issued by the other state is recognized in this state, if the attorney general of the State of Texas determines that a background check of each applicant for a license issued by that state is conducted by state or local authorities or an agent of the state or local authorities before the license is issued to determine the applicants' eligibility to possess a firearm under federal law; and

WHEREAS, the governor has received a statement of finding from the attorney general that a background check of each applicant for a permanent state permit to carry a pistol or revolver issued by the State of Connecticut is conducted by state or local authorities or an agent of the state or local authorities before the permit is issued to determine the applicants' eligibility to possess a firearm under federal law, pursuant to Connecticut General Statutes §29-17a, 29-28(a), 29-29(a)-(b), and 29-361(d); and

WHEREAS, the State of Texas is therefore authorized to recognize the validity of such permanent state permits;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, do hereby proclaim that the State of Texas shall give full faith and credit to valid, permanent state permits to carry a pistol or revolver issued by the State of Connecticut. This recognition shall be for the purpose of concealed carry only, and shall require that Connecticut permitees comply with all laws, rules, and regulations of the State of Texas governing concealed carry, including age restrictions and types of weapons permitted. This recognition does not extend to temporary paper permits issued by a local Connecticut authority.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 29th day of April, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200502187

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0325

The Honorable Troy Fraser

Chair, Committee on Business and Commerce

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether police officers in a civil service municipality who advance in rank because of an officer's military leave of absence may be demoted to their former positions once the officer returns from military service (RQ-0282-GA)

S U M M A R Y

A police officer or fire fighter who fills the position of an officer on a military leave of absence under section 143.072 of the Local Government Code is subject to replacement upon the officer's return from leave. When a city civil service commission has filled a position under section 143.072 with a replacement officer, a department head may assign a subordinate officer to perform the duties of the replacement officer under section 143.038. Such an assignment is not a civil service promotion, and may be ended by the department head as circumstances warrant.

Opinion No. GA-0326

The Honorable Tom Maness

Jefferson County Criminal District Attorney

1001 Pearl Street, 3rd Floor

Beaumont, Texas 77701-3545

Re: Proper construction of Government Code section 551.143 and whether it is unconstitutionally vague (RQ-0291-GA)

S U M M A R Y

Members of a governmental body who knowingly conspire to gather in numbers that do not physically constitute a quorum at any one time but who through successive gatherings secretly discuss a public matter with a quorum of that body violate section 551.143 of the Open Meetings Act. This section is not on its face void for vagueness.

Opinion No. GA-0327

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002-1700

Re Whether a county's self-funded medical insurance plan is subject to certain provisions of the Texas Insurance Code (RQ-0296-GA)

S U M M A R Y

Pursuant to the state's continuing statutory revision program, insurance code provisions of the Revised Civil Statutes recently have been codified into the Texas Insurance Code. Though the revision program is nonsubstantive, the Texas Supreme Court, in Fleming Foods of Texas, Inc. v. Rylander, directs that when specific provisions of a nonsubstantive codification are direct, unambiguous, and cannot be reconciled with prior law, the codification rather than the prior law must be given effect. This change from the civil statutes to the Insurance Code is the context in which we answer Harris County's questions.

Harris County's self-funded benefit plan is not a "health benefit plan" as defined by Chapter 1501 of the Texas Insurance Code. Chapter 157 of the Texas Local Government Code, including section 157.101, is not another insurance law of this state as contemplated by Insurance Code section 1501.002(6) but is instead legislative authority for counties to provide health benefits to employees and their dependents. Thus, Harris County is not a health benefit plan issuer under Insurance Code section 1501.002(6).

Because the Harris County Plan is not a health benefit plan and Harris County is not a health benefit plan issuer, the Plan is not subject to the limiting age contained in section 1501.609 of the Insurance Code. Similarly, because the Plan is not a health benefit plan and the County is not a health benefit plan issuer, the provisions of section 1503.003(a), prohibiting the coverage of a covered County employee's child from being conditioned on the child's full-time enrollment at an educational institution, do not apply to the Plan.

Section 1201.062, Insurance Code, expressly applies to self-funded plans like the Harris County Plan. Therefore, the Plan must cover, when it provides coverage for a child of a covered County employee, unmarried grandchildren who are younger than 25 and who are federal income tax dependents of the covered employee. The Plan must also cover children for whom the covered employee must provide medical support under an order issued pursuant to Chapter 154, Texas Family Code.

Because the Harris County Plan is generally not subject to chapter 1201 of the Insurance Code, it is not required by sections 1201.063 and 1201.064 to provide coverage for grandchildren and stepchildren who do not reside with the covered County employee, provided they are not otherwise entitled to coverage under section 1201.062(a)(1) or (2) of the Insurance Code. For the same reasons, the Plan is not prohibited by these provisions from charging different premiums for grandchildren and stepchildren that are not the adopted or natural child of the covered employee.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200502164
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 27, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

The Office of the Attorney General (OAG) proposes amendments to Subchapter A (General Provisions and Eligibility §§60.1, 60.2, 60.3, 60.5, 60.6, 60.9, 60.10, 60.11, 60.12, and 60.13), Subchapter B (Application Review and Award Process §§60.101, 60.102, and 60.103), Subchapter C (Grant Budget Requirements §§60.201, 60.202, 60.204, 60.205, and 60.208), Subchapter D (Required Attachments §60.301), and Subchapter E (Administering Grants §§60.405, 60.408, and 60.409), relating to rules governing the Texas Crime Victim Services Grant Programs and proposes to revise Subchapter C by adding new rule §60.209. The proposed amendments and new rule will better serve victims of crime by improving the administration of the Texas Crime Victim Services Grant Programs.

According to Article I, Section 31 of the Texas Constitution, the Texas Compensation to Victims of Crime Fund may be expended as provided by law only for delivering or funding victim-related compensation, services, or assistance. Article 56.541(e) of the Texas Code of Criminal Procedure provides that the OAG may use funds from the Texas Compensation to Victims of Crime Fund for grants or contracts supporting crime victim-related services or assistance. Subsection (f) of the Article requires the OAG to adopt rules necessary to carrying out the Article's provisions.

The proposed amendments and new rule accurately implement, interpret, and prescribe the law and minimum standards of practices, procedures, and policies of the OAG relating to the administration of the Texas Compensation to Victims of Crime Fund as required by the Administrative Procedures Act, Texas Government Code, Ch. 2001.

Subchapter A (General Provisions and Eligibility, §§60.1, 60.2, 60.3, 60.5, 60.6, 60.9, 60.10, 60.11, 60.12, and 60.13). The proposed amendment to §60.1 corrects a punctuation error in (6). Section 60.2 allows for the rules to be suspended at the discretion of the OAG. Section 60.3 changes the "CVC fund" to the "Texas Compensation to Victims of Crime Fund." Section 60.5 enumerates the purposes of the OVAG and VCLG funds. Section 60.6 lists eligible purpose areas of OVAG funds. Section 60.9 enumerates eligible budget categories for both the OVAG and VCLG programs. Section 60.10 provides funding levels and requirements for local and statewide programs under both the OVAG and VCLG programs. Section 60.11 sets out the applicable grant term. Section 60.12 makes clear that continued funding is subject to a renewal by the OAG. Section 60.13 describes the OAG's authority to fund grant projects outside the standard application cycle.

Subchapter B (Application, Review and Award Process, §§60.101, 60.102, and 60.103). The proposed amendment to §60.101 states that the OAG shall determine the process for making funding decisions. The proposed amendment to §60.102 describes how an applicant will be notified of an award and requires an applicant to accept or reject the award within a certain time period. Section 60.103 states that all funding decisions made by the OAG are final.

Subchapter C (Grant Budget Requirements, §§60.201, 60.202, 60.204, 60.205, and 60.208). The proposed amendment to §60.201 lists the requirements for the personnel budget category. Section 60.202 describes the fringe benefits allowed under the grant. Section 60.204 adds that grant funds may not be used for out-of-state travel. Section 60.205 has been modified to reflect the current provisions of the Uniform Grant Management Standards, published by the Governor's Office of Budget and Planning. Section 60.208 defines indirect costs.

Subchapter D (Required Attachments, §60.301). The proposed amendment to §60.301 requires that a resolution be included with the application.

Subchapter E (Administering Grants, §§60.405, 60.408, and 60.409). The proposed amendment to §60.405 places specific requirements on a grantee making a grant adjustment. Section 60.408 outlines the process for maintenance of records. Section 60.409 provides for a written request within 10 days of receipt of a notice of sanction.

The OAG is also proposing new rule §60.209 to outline unallowable costs.

Mr. Herman Millholland, Chief of the Crime Victim Services Division of the OAG, has determined that for the first five year period in which the proposed rule and amendments are in effect, no fiscal implication to units of local government is anticipated.

Mr. Millholland has also determined that for the first five-year period in which the proposed rule and amendments are in effect there will not be an adverse effect on small businesses. There is no anticipated economic costs to persons in connection with these rules.

Mr. Millholland has determined that for the first five-year period in which the proposed rule and amendments are in effect, the anticipated public benefit is the better administration of the Texas Compensation to Victims of Crime Fund to provide for an improved Texas Crime Victim Services Grant Programs.

Comments on the proposed rule and amendments may be submitted, in writing, no later than 30 days from the date of this publication to Melissa Foley, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711-2198 or by telephone (512) 463-0826 or by e-mail to melissa.foley@oag.state.tx.us. All requests for a public hearing on the proposed rule and amendments, submitted under the Administrative Procedure Act, must be received by the OAG not more than 15 days after the notice of proposed changes in the sections that have been published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§60.1 - 60.3, 60.5, 60.6, 60.9 - 60.13

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

§60.1. Definitions.

The following terms and abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) RFA--Request for Application; [~~and Planning;~~]

(6) UGMS--Uniform Grant Management Standards, published by the Governor's Office of Budget and Planning;

(7) - (8) (No change.)

§60.2. Construction of Rules.

Unless otherwise noted, these rules apply to both OVAG and VCLG grant programs. If good cause is established to show that compliance with these rules may result in an injustice to any party, the rules may be suspended at the discretion of the OAG [~~Attorney General or his designee~~].

§60.3. Source of Funds.

Article 56.541(e) of the Texas Code of Criminal Procedure authorizes the OAG to use money appropriated to the Texas Compensation to Victims of Crime Fund [~~CVC fund~~]for grants or contracts supporting victim-related services or assistance. Pursuant to this authorization, the OAG created two types of grant programs, OVAG and VCLG. The source of grant funds for both programs is a biennial appropriation by the Texas Legislature from specified court costs and fees. The funds are constitutionally dedicated. Allocation of funds in the OVAG program is competitive.

§60.5. Purpose of Funds.

(a) (No change.)

(b) The purpose of the OVAG Program is to provide funds on a competitive basis to programs that address the unmet needs of victims of violent crime by maintaining or increasing their access to high quality services. [~~Funds awarded under the OVAG program are typically used to fund victim services for which other funding sources may not exist.~~]

(c) The OAG reserves the right to consider all other appropriations or funding an applicant currently receives when making funding decisions. The OAG may give priority to applicants that do not receive other sources of funding, including funding that originates from the Texas Compensation to Victims of Crime Fund.

(d) The OAG reserves the right to give priority to programs providing direct victim services with grant funds, programs that provide information and education about victims' rights in their community, and programs that utilize volunteers in providing services.

(e) The OAG reserves the right to give priority to programs providing services in certain geographic or programmatic areas that address the unmet needs of victims of violent crime by maintaining or increasing their access to quality services.

(f) Within its discretion, the OAG shall determine the manner and procedure for making funding decisions.

§60.6. OVAG Eligible Purpose Areas.

Grants awarded under OVAG [~~this chapter~~] may be used for the following purposes:

(1) providing direct victim services;

(2) helping identify crime victims and providing or referring them to needed services [~~victim services training~~];

(3) helping contact crime victims who might not otherwise be reached [~~victim assistance public awareness~~];

(4) connecting crime victims to services and assisting in their recovery; [~~emergency funds to victims; and~~]

(5) training professionals and volunteers to improve their ability to afford victims their rights as provided by law, to competently assist victims in their recovery, and to establish a continuum of care accessible to all victims of violent crime; and

(6) [~~(5)~~] other support for victim services as determined by the OAG.

§60.9. Eligible Budget Categories.

(a) Eligible budget categories are limited to the following:

(1) personnel [~~salary~~];

(2) - (8) (No change.)

(b) (No change.)

§60.10. Funding Levels and Match [~~Limits~~].

(a) For local programs, under VCLG and OVAG, the minimum [~~maximum~~] amount of funding for which an applicant may apply is $20,000 [~~$60,000~~] per fiscal year [~~($120,000 for the two-year grant period)~~].

(b) For statewide programs, under OVAG only, the minimum [~~maximum~~] amount of funding for which an applicant may apply is $20,000 [~~$250,000~~] per fiscal year [~~($500,000 for the two-year grant period)~~].

(c) The maximum amount of funding for which an OVAG and VCLG applicant may apply is stated in the RFA and the Application Kit.

(d) The OAG may require cash and/or in-kind match for OVAG and VCLG grants as stated in the RFA and the Application Kit.

(e) [~~(c)~~] Certain statewide entities may be eligible to apply for pass-through funding on behalf of their local members [~~subsidiaries~~]. Such pass-through funding is subject to different funding limitations from those described in subsections (a) and (b) of this section. Entities wishing to determine whether they are eligible for this type of funding should consult the RFA and Application Kit [~~application materials~~].

(f) [~~(d)~~] The amount of an award and the match required are [~~is~~] determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested. The OAG reserves the right to alter the required match for any funded program.

(g) The OAG may require volunteers to be used as an in-kind match and may give priority to applicants who utilize volunteers in their organization.

§60.11. Grant Period.

(a) Grants are awarded for a one year term [~~two-year period~~] beginning September 1st and ending August 31st [~~after each legislative session, with separate budgets for each state fiscal year~~].

(b) The OAG reserves the right to alter the starting date and length of the grant term [~~period~~].

§60.12. Continuation of Funding.

There is no commitment by the OAG that a grant, once funded, will receive subsequent funding. The OAG will have the option to renew the grant for one additional year subject to and contingent on funding, review and approval.

§60.13. Nonstandard Funding.

If the OAG determines that it is in the best interest of the state, the OAG may fund projects outside the standard application cycle or process and may change a grant to a different funding source if necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502145
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: July 10, 2005
For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

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SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

1 TAC §§60.101 - 60.103

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

§60.101. Scoring and Review Process.

(a) The OAG will review each eligible application. The OAG may designate a team to evaluate or score eligible applications. The OAG has full authority in making all funding decisions. However, allocation of the funds for the OVAG program shall be competitive based on a process established by the OAG.

(b) - (c) (No change.)

§60.102. Grant Decision Process.

(a) The OAG will inform the applicant in writing of its decision regarding a grant award [~~through either a Statement of Grant Award or a denial letter signed by the Attorney General or his designee~~].

(b) (No change.)

(c) The OAG must receive a written acceptance or rejection of a grant award within 45 calendar days of the date of notification [~~the Statement of Grant Award~~]. An applicant's failure to provide written [~~the grantee~~] acceptance [~~notice~~] to the OAG within this time period will be construed as a rejection of the grant award, and the OAG may deobligate funds.

(d) The OAG may add special conditions to the grant award requiring documents to be submitted prior to the reimbursement of any expenses. Special conditions include submission of attachments or justification for certain items. Until satisfied, these special conditions will affect the grantee's ability to receive [~~access~~] funds. If special conditions are not resolved, the OAG may deobligate the entire amount of the grant award.

§60.103. Review of Denial.

All funding decisions made by the OAG [~~Attorney General or his designee~~] are final and are not subject to appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502146
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: July 10, 2005
For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

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SUBCHAPTER C. GRANT BUDGET REQUIREMENTS

1 TAC §§60.201, 60.202, 60.204, 60.205, 60.208

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

§60.201. Personnel [~~Salary~~].

(a) The personnel [~~salary~~] budget category may include salaries of employees only, and not compensation paid to independent contractors. "Employee" is defined as a person under the direction and supervision of the grantee [~~entity~~], who is on the payroll of the grantee [~~entity~~] and for whom the grantee [~~entity~~] is required to pay applicable income withholding taxes; or a person who will be on the grantee's [~~entity's~~] payroll and for whom the grantee [~~entity~~] will pay applicable income withholding taxes once the grant is awarded.

(b) Salaries for grant-funded positions must be reasonable and comply with the grantee's [~~entity's~~] salary classification schedule. If a

grantee [~~an entity~~] does not have a classification schedule, the grantee [~~entity~~] must maintain documentation supporting that the salary is commensurate with that paid in the geographic area for positions with similar duties and qualifications. In any event, the OAG will determine whether [~~or not~~] a salary is reasonable and may limit the OAG-funded portion of any salary.

(c) (No change.)

(d) A grantee [~~An entity~~] may not use grant funds to pay overtime.

§60.202. Fringe Benefits.

(a) (No change.)

(b) Grant funds may be used to pay fringe benefits only if grant funds are also being used for salaries [~~salary~~].

(c) A grantee [~~An entity~~] must provide grant-funded personnel the same fringe benefits provided to all other non-grant-funded personnel of the grantee [~~entity~~].

§60.204. Travel.

(a) - (b) (No change.)

(c) Grant funds may not be used to pay for out-of-state travel.

§60.205. Equipment.

(a) "Equipment" is defined as an article of non-expendable, tangible personal property having a useful life of more than one (1) year and a per unit acquisition cost which equals the lesser of: [~~any item with a unit cost of $1,000 or more and any other item, without regard to the unit cost, that a grantee capitalizes in its own accounting records.~~]

(1) the capitalization level established by the grantee for financial statement purposes: or

(2) $5,000.

(b) A grantee may use equipment paid for with OAG funds only for grant-related purposes and not for personal or non-grant-related purposes.

(c) All costs for equipment must follow the guidelines set forth in UGMS and OMB circulars.

(d) (No change.)

§60.208. Indirect Costs.

(a) "Indirect costs" is defined as any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives[~~,~~] or with at least one intermediate cost objective. For additional guidelines on "indirect costs," grantees [~~entities~~] should consult UGMS.

(b) The OAG will not allow indirect costs unless the grantee [~~entity~~] submits a cost allocation plan approved by a cognizant agency and the costs are approved by the OAG.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502147

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: July 10, 2005

For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

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1 TAC §60.209

The new rule is proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The new rule affects Texas Code of Criminal Procedure, Article 56.541.

§60.209. Unallowable Costs.

(a) OAG grant funds may not be used for the following:

(1) to pay overtime, out-of-state travel, dues, or lobbying;

(2) to purchase food and beverages for meetings or program participants;

(3) to fund the purchase of vehicles; or

(4) to purchase promotional items or recreational activities.

(b) Funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within the RFA.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502150

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: July 10, 2005

For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

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SUBCHAPTER D. REQUIRED ATTACHMENTS

1 TAC §60.301

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

§60.301. Resolution.

(a) The resolution permits the applicant [~~entity~~] to submit an application. [~~and~~] The resolution shall [~~must~~] be submitted by the applicant before the award or release of funds.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

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Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
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For information regarding this publication, please call A.G. Younger, Agency Liaison, at (512) 463-2110.

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §§60.405, 60.408, 60.409

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the OAG to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money from the Texas Compensation to Victims of Crime Fund for grants or contracts that support crime victim-related services or assistance.

The amendments affect Texas Code of Criminal Procedure, Article 56.541.

§60.405. Grant Adjustments.

(a) (No change.)

(b) If it becomes necessary to move funds that are greater than ten percent of the total budget between existing budget categories, revise the scope or target of the program, add new budget categories, or alter project activities, a grantee must first request and receive approval from the OAG for a grant adjustment. The person designated [~~in the Grantee Acceptance Notice~~] to make such requests or the authorized signator must sign all grant adjustment request forms.

(c) (No change.)

§60.408. Maintenance of Records.

(a) The grantee shall maintain adequate records to support its charges, procedures, and performances to the OAG for all work related to the grant. The grantee also shall maintain such records as are deemed necessary by the OAG and auditors of the State of Texas, the United States, or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to the grant. [~~Unless otherwise noted, a grantee must retain all records relating to the grant for at least five years following the closure of the most recent audit report for the purposes of federal and state auditing and monitoring. Records may be retained in an electronic format.~~] Such records include, but are not limited to:

(1) - (3) (No change.)

(4) Adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, expenses, and explanations of grant-related activities performed during the travel.

(5) (No change.)

(6) Records of the disposition, replacement or transfer of any equipment[~~, non-expendable personal property or real property~~] purchased with grant funds. The [~~five-year~~] retention period for these records begins on the date of the disposition, replacement or transfer.

(7) Records of any litigation, claims, or audits involving the grant. [~~The retention period for these records shall continue until such litigation, claims or audits have been resolved.~~]

(b) The grantee shall maintain and retain for a period of four (4) years after the submission of the final expenditure report all such records as are necessary to fully disclose the extent of services provided under the contract. However, if four years after the submission of the final expenditure report, the records are subject to or implicated in pending litigation, claims, or audits, they must be retained until those matters have been fully and finally resolved.

(c) Records may be retained in an electronic format.

§60.409. Sanctions.

(a) - (e) (No change.)

(f) A grantee may request a review of the sanctions imposed, as described below:

(1) The grantee must make a written request for reconsideration no later than 10 days after the receipt of an OAG notice of sanctions [~~A grantee may, within 10 calendar days of the date on the notice of sanctions, make a written request for reconsideration of any sanctions imposed~~].

(2) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
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CHAPTER 62. SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES

1 TAC §§62.1 - 62.9, 62.11 - 62.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Attorney General (OAG) proposes the repeal of §§62.1 - 62.9 and 62.11 - 62.19, relating to the provision of services to survivors of sexual assault and for sexual assault prevention in Texas.

The repeal is proposed under Texas Government Code, Chapter 420, entitled the Sexual Assault Prevention and Crisis Services Act. Chapter 420 promotes the development of locally based and supported nonprofit programs for survivors of sexual assault and the standardization of the quality of services provided. Section

420.011 grants the OAG the authority to adopt rules to implement the chapter. The OAG conducted a review of Title I, Chapter 62 of the Texas Administrative Code and determined that the rules warranted a substantial reorganization. Specifically, the OAG found the rules in their current form to be confusing and difficult to apply. To streamline the contract application and funding process and the certification of advocate training programs and Sexual Assault Nurse Examiners (SANE), new rules under Chapter 62 are being proposed and published simultaneously with a proposed repeal of the rules currently contained in the chapter. The expected effects of the proposed repeal together with the proposed new rules together are streamlined contract funding and administration and advocate training and SANE certification.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for the first five-year period the repeals are in effect there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the repeals as proposed.

Mr. Millholland has determined that for the first five-year period the repeals are in effect the anticipated public benefit will be more efficient administration of the Federal and State funds for grants or contracts supporting sexual assault victim-related services or assistance.

Mr. Millholland has also determined that for the first five-year period the repeals are in effect, there will be no adverse economic impact on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments may be submitted no later than 60 days from the date of publication to Carrie Cothran-Williams, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 011-1, Austin, Texas 78711-2198, or by telephone (512) 936-1661, or by e-mail to sapcs@oag.state.tx.us.

The repeals are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

The repeals affect Texas Government Code, Chapter 420.

§62.1. Introduction and Scope.
§62.2. Definitions.
§62.3. Potential Applicants.
§62.4. Procedure To Apply for Funds (General Information for the Applicant).
§62.5. Request for Proposal Applications.
§62.6. Evaluation Requirements of the Program.
§62.7. Application Review Criteria.
§62.8. Future Participation.
§62.9. Administrative Review.
§62.11. Definitions.
§62.12. Program Requirements for Training Certification.
§62.13. Test Requirements.
§62.14. Trainers.
§62.15. Continuing Education.
§62.16. Program Application Process for Training Certification.
§62.17. Appeals Process.
§62.18. Revocation and Appeals Process for Revocation of Certification.
§62.19. Restoration of Good Standing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

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Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
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For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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1 TAC §§62.33 - 62.86

The Office of the Attorney General (OAG) proposes new §§62.33 - 62.86, relating to the funding of OAG Sexual Assault Prevention and Crisis Services contracts, the application, review and award process, and sexual assault advocate training certification.

Chapter 420 of the Texas Government Code, entitled the Sexual Assault Prevention and Crisis Services Act, promotes the development of locally based and supported nonprofit programs for survivors of sexual assault and the standardization of the quality of services provided. Section 420.011 grants the OAG the authority to adopt rules to implement the chapter. The OAG conducted a review of Title I, Chapter 62 of the Texas Administrative Code and determined that the new rules were warranted. Specifically, the OAG found the rules in their current form to be confusing and difficult to apply. To streamline the contract application and funding process and the certification of advocate training programs, new rules under Chapter 62 are being proposed and published simultaneously with a proposed repeal of the rules currently contained in the chapter. The expected effects of the proposed repeal together with the proposed new rules together are streamlined contract funding and administration and certification of advocate training programs.

Section 62.33 states that the rules will apply to Sexual Assault Prevention and Crisis Services (SAPCS) contracts and may be suspended at the discretion of the Attorney General or the Chief of Crime Victim Services Division. Section 62.34 provides definitions for terms and abbreviations in this chapter. Section 62.35 describes the source of the funds for SAPCS contracts. Section 62.36 provides that, if an application for funds is approved, funding is contingent upon appropriation of funds by the United States Congress and Texas Legislature. Section 62.37 describes the purpose of SAPCS funds. Section 62.38 lists the organizations eligible to apply under the SAPCS program. Section 62.39 sets out the applicable contract period. Section 62.40 makes clear that continued funding of a contract depends upon a contractor's past performance. Section 62.41 describes the OAG's authority to require matching funds and to fund contracts outside the standard application cycle. Section 62.42 describes how a potential applicant may obtain a Request for Applications (RFA). Section 62.43 describes the scoring and review process and specifies the methods used to allocate SAPCS funds. Section 62.44 describes how an applicant will be notified of a contract award. Section 62.45 states that all funding decisions are final. Section 62.46 provides general provisions applicable to an applicant's budget. Section 62.47 enumerates eligible budget categories for SAPCS funds. Section 62.48 lists the requirements for the personnel budget category. Section 62.49 defines "fringe benefits" and authorizes contract funds

to be used for fringe benefits in limited circumstances. Section 62.50 describes the limited circumstances under which a contractor may be reimbursed for professional and consultant services. Section 62.51 provides limitations for reimbursement of travel expenses. Section 62.52 defines "equipment" and sets guidelines for the inclusion of equipment costs in an applicant's budget. Section 62.53 describes the types of supplies that may be included in an applicant's budget. Section 62.54 defines "other direct operating expenses" for inclusion in an applicant's budget. Section 62.55 places conditions on the inclusion of "indirect costs" in an applicant's budget. Section 62.56 describes unallowable costs. Section 62.57 lists required assurances. Section 62.58 states that all required forms will be provided by the OAG and that untimely submission of these forms to the OAG may result in sanctions. Section 62.59 requires an applicant to designate an authorized signator for contract administration purposes. Section 62.60 requires a contractor to submit to the OAG documentation of its financial status. Section 62.61 requires a contractor to provide performance reports to the OAG and submit to an assessment of a program's effectiveness. Section 62.62 requires a contractor to maintain and submit inventory reports to the OAG. Section 62.63 limits the number of contract adjustments a contractor may undertake and places specific requirements on a contractor making such an adjustment. Section 62.64 reserves in the OAG a license to use a contractor's copyright obtained through contract funds. Section 62.65 requires a contractor to comply with Uniform Grant Management Standards and applicable Office of Management and Budget circulars throughout the contract administration process. Section 62.66 requires a contractor to retain records relating to the contract for a specific time period. Section 62.67 provides possible sanctions for a contractor's failure to comply with the rules and details the actions a contractor must undertake to obtain a review of any sanctions imposed. Section 62.68 describes circumstances under which the OAG may suspend funds or terminate contracts. Section 62.69 describes the appeal process when a contract is suspended or terminated. 62.70 requires a contractor to notify the OAG, and the local prosecutor if applicable, of any violation or possible violation of law relating to the contract. Section 62.71 prevents persons affiliated with a contract from participating in any action that would directly or indirectly be a personal benefit to the person or the person's relatives. Section 62.72 details the quality assurance measures the OAG will conduct throughout the contract period. Section 62.73 requires a contractor to conduct or undergo annual contract audits and to provide the results of the audit to the OAG. Section 62.74 defines generally "Advocate Training Certification." Section 62.75 provides definitions for terms used in the chapter. Section 62.76 lists policy and training requirements local programs must implement. Section 62.77 dictates trainer qualifications. Section 62.78 provides testing requirements. Section 62.79 sets out continuing education requirements. Section 62.80 permits sexual assault programs with a certified training to use only advocates who have attended a certified training. Section 62.81 describes the application for training certification. Section 62.82 requires the OAG to verify that the requirements of certification are being maintained by the program through various means. Section 62.83 requires programs to renew their certification every two years. Section 62.84 grants the OAG the authority to place a certified training program on suspension or probation, or to decertify the program. Section 62.85 permits a program to appeal the OAG's suspension, probation or decertification decision, and sets out the procedure for doing so. Section 62.86 authorizes the OAG to request a pre-hearing conference.

Herman Millholland, Chief, Crime Victim Services Division of the OAG, has determined that for the first five-year period the new sections are in effect there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Millholland has determined that for the first five-year period the proposed new sections are in effect the anticipated public benefit will be more efficient administration of the Federal and State funds for grants or contracts supporting sexual assault victim-related services or assistance.

Mr. Millholland has also determined that for the first five-year period the proposed new sections are in effect there will be no adverse economic impact on small businesses because the new sections impose no additional burdens on anyone. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed.

Comments may be submitted no later than 60 days from the date of publication to Carrie Cothran-Williams, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Mail Code 011-1, Austin, Texas 78711-2198, or by telephone (512) 936-1661, or by e-mail to sapcs@oag.state.tx.us.

The new sections are proposed under the Texas Government Code, §420.004 and §420.011, which authorize the OAG to adopt rules necessary to implement Chapter 420.

The new sections affect Texas Government Code, Chapter 420.

§62.33. Application of Rules.

Unless otherwise noted, these rules apply to all SAPCS contract programs. If good cause is established to show that compliance with these rules may result in an injustice to any party, the rules may be suspended at the discretion of the OAG.

§62.34. SAPCS Definitions.

The following terms and abbreviations, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) OMB--Office of Management and Budget;

(2) OAG--Office of the Attorney General;

(3) RFA--Request for Applications;

(4) Sexual Assault--Any act or attempted act as described in the Texas Penal Code, Chapter 21 or §§22.011, 22.021, 25.02, 43.03, 43.04, 43.24, 43.25, or 43.251.

(5) Sexual Assault Program--Any local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency that provides the minimum services established in Chapter 420, Government Code;

(6) SAPCS--Sexual Assault Prevention and Crisis Services program of the OAG;

(7) Survivor--An individual who is a victim of sexual assault, regardless of whether a law enforcement report is made or the perpetrator is convicted;

(8) Special Project--Projects outside the standard application cycle or process for SAPCS funding, but that relate to sexual assault services.

(9) UGMS--Uniform Grant Management Standards, published by the Governor's Office.

§62.35. Source of Funds.

(a) Federal and state funds are used to contract with sexual assault programs.

(b) Federal Department of Health and Human Services, Preventative Health Services Block Grant, Catalog of Federal Domestic Assistance (CFDA) Number 93.991 and Rape Prevention Education Funding CFDA Number 93.136 in accordance with 45 C.F.R. Part 74 are the source of these funds.

(c) Article 56.541(e) of the Texas Code of Criminal Procedure authorizes the OAG to use money appropriated to the Texas Compensation to Victims of Crime Fund for grants or contracts supporting victim-related services or assistance. Pursuant to this authorization, the OAG funds SAPCS contracts according to the biennial appropriation by the Texas Legislature. The funds are constitutionally dedicated.

(d) Additional funding comes from parole fees pursuant to §19(e), Article 42.12, Code of Criminal Procedure, and §508.189, Government Code.

§62.36. Availability of Funds.

All funding is contingent upon the appropriation of funds by the United States Congress and the Texas Legislature and upon approval of an application for funds by the OAG.

§62.37. Purposes of Funding.

(a) Direct and support services to survivors of sexual assault and their families;

(b) Education and training about the nature, scope, and prevention of sexual assault to the public, professionals, students, and volunteers, as required by federal funding guidelines;

(c) Activities and services to prevent sexual assault; and

(d) Other support for services to survivors and their families as determined by the OAG.

§62.38. SAPCS Eligible Applicants.

(a) The following organizations are eligible to apply under the SAPCS program:

(1) local units of government, excluding law enforcement agencies and prosecutor's offices;

(2) non-profit agencies with 26 U.S.C. §501(c)(3) status; and

(3) state agencies.

(b) An organization must also offer and maintain the following minimum services for at least nine months to be eligible to receive a SAPCS contract, pursuant to Chapter 420, Texas Government Code:

(1) 24-hour crisis hotline;

(2) crisis intervention;

(3) public education (including professional education);

(4) advocacy and accompaniment to hospitals, law enforcement offices, prosecutors' offices, and courts for survivors and their family members; and

(5) crisis intervention advocate training.

§62.39. Contract Term.

(a) Contracts are awarded for a one year term beginning September 1st and ending August 31st.

(b) The OAG reserves the right to alter the starting date and length of the contract term.

§62.40. Continuation of Funding.

There is no commitment by the OAG that a contract, once funded, will receive subsequent funding. The OAG will have the option to renew this contract for one additional year subject to and contingent on funding, review and approval.

§62.41. Match and Nonstandard Funding.

(a) The OAG may require cash and/or in-kind match for SAPCS contracts as stated in the RFA and application kit. The OAG reserves the right to alter the required match for any funded program.

(b) If the OAG determines that it is in the best interest of the state, the OAG may fund special projects outside the standard application cycle or process.

§62.42. SAPCS Application Process.

(a) After the RFA is published in the *Texas Register*, it will be available on the official agency website at www.oag.state.tx.us, or an applicant may request the RFA from the Crime Victim Services Division.

(b) An applicant for a contract under this Chapter must submit an application for funding to the Crime Victim Services Division of the OAG.

(c) The application must be received by the OAG, Crime Victim Services Division, by the deadline stated in the RFA.

(d) Providing false information, knowingly or unknowingly, on an application for funding may cause an application to be denied or cause the contract, once awarded, to be terminated.

§62.43. SAPCS Scoring and Review Process.

(a) The OAG will review each timely and complete application submitted by an eligible applicant. The OAG may designate a team to evaluate or score applications. The OAG has full and complete authority in making all funding decisions. New applicants will compete for the allocation of the funds for SAPCS programs, and a funding award to previous recipients may be formula-based.

(b) The OAG reserves the right to alter the formula or funding method.

(c) The OAG reserves the right to fund programs at amounts higher or lower than the amount determined according to the formula or other funding method when special circumstances exist.

(d) During the review process, an OAG staff member, or a designee, may contact the applicant for additional information.

(e) There are several stages of the review process. A decision to approve or deny funding may be made at any point during that process.

§62.44. SAPCS Contract Award Process.

(a) The OAG will inform the applicant in writing of its decision regarding a contract award noting the funding amount.

(b) In an effort to keep the applicants informed, the OAG may post information on the official agency website, www.oag.state.tx.us.

(c) The OAG may add special conditions to the contract award requiring documents to be submitted prior to the reimbursement of any expenses. Special conditions include submission of attachments or justification for certain items. Until satisfied, these special conditions will affect the contractor's ability to receive funds. If special conditions are not resolved, the OAG may de-obligate the entire amount of the contract.

§62.45. Review of Denial.

All funding decisions made by the OAG are final and are not subject to appeal.

§62.46. General Budget Provisions.

(a) All new applicants and previous recipients must submit a budget with their application.

(b) Contracts awarded by the OAG are cost reimbursement-only contracts. Contractors are reimbursed for authorized actual expenditures reflected in the documents required to be submitted to the OAG. If necessary, the OAG may use an alternative method of payment.

(c) An individual paid with OAG contract funds may not receive dual compensation for the same work, even if the services performed benefit more than one organization.

(d) All contractors must follow the rules and requirements as outlined in UGMS and all applicable OMB circulars.

(e) An organization must have an allocation plan for budget items that are funded partially with OAG sources or must maintain equivalent receipts and records.

(f) All budget items must be reasonable and necessary and be allocated proportionately within each budget category.

(g) All contracts or equipment purchases with a value of $25,000 or more must be pre-approved by the OAG.

§62.47. Eligible Budget Categories.

(a) Eligible budget categories are limited to the following:

(1) personnel;

(2) fringe benefits;

(3) professional and consultant services;

(4) travel;

(5) equipment;

(6) supplies;

(7) other direct operating expenses; and

(8) indirect costs.

(b) The description and requirements for each budget category may be found in §§62.48 - 62.55 of this chapter.

§62.48. Personnel.

(a) The personnel budget category may include only salaries for employees, and not compensation paid to independent contractors. "Employee" is defined as a person under the direction and supervision of the organization, who is on the payroll of the organization and for whom the organization is required to pay applicable income withholding taxes; or a person who will be on the organization's payroll and for whom the organization will pay applicable income withholding taxes once the OAG contract is awarded.

(b) Salaries for OAG contract-funded positions must be reasonable and comply with the organization's salary classification schedule. If an organization does not have a classification schedule, the organization must maintain documentation supporting that the salary is commensurate with that paid in the geographic area for positions with similar duties and qualifications. In any event, the OAG will determine whether a salary is reasonable and may limit the OAG-funded portion of any salary.

(c) The OAG may set minimum restrictions on the percentage of salary that may be funded by the OAG.

§62.49. Fringe Benefits.

(a) "Fringe benefits," as used in §62.47(a)(2) of this chapter, is defined as allowances and services provided by an organization to its employees as compensation in addition to regular salaries and wages. Fringe benefits may include the costs of leave, employee insurance, pensions, and unemployment benefit plans.

(b) OAG contract funds may be used to pay fringe benefits only for positions also funded by OAG contract funds.

(c) An organization must provide OAG-funded personnel the same fringe benefits provided to all other organization personnel not funded by the OAG contract.

§62.50. Professional and Consultant Services.

(a) "Professional and consultant services," as used in §62.47(a)(3) of this chapter, is defined as any service for which the organization uses an outside source for necessary support. Professional and consultant services may include accounting services, counseling, legal services, and computer support.

(b) All costs for professional and consultant services must follow the guidelines set forth in UGMS and applicable OMB circulars.

(c) OAG contract funds may not be used to pay a subcontractor or vendor who participates directly in writing the application for funds.

§62.51. Travel.

(a) Travel expenses will be reimbursed according to the Texas State Travel Guidelines, unless a contractor's travel policy provides a lesser reimbursement.

(b) Travel must relate directly to the delivery of services or to the central focus of the contract.

§62.52. Equipment.

(a) "Equipment," as used in §62.47(a)(5) of this chapter, is defined as an article of non-expendable, tangible personal property having a useful life of more than one (1) year and an acquisition cost which equals the lesser of:

(1) the capitalization level established by the contractor for financial statement purposes; or

(2) $5,000.

(b) A contractor may use equipment paid for with OAG funds only for contract-related purposes and not for personal or non-contract-related purposes.

(c) All costs for equipment must follow the guidelines set forth in UGMS and OMB circulars.

(d) Grant funds may not be used to fund the purchase of vehicles.

§62.53. Supplies.

"Supplies," as used in §62.47(a)(6) of this chapter, is defined as consumable items directly related to the day-to-day operation of the contract. Allowable items include office supplies, paper, postage, and education resource materials.

§62.54. Other Direct Operating Expenses.

(a) "Other direct operating expenses," as used in §62.47(a)(7) of this chapter, is defined as those costs not included in other budget categories and which are directly related to the day-to-day operation of the OAG contract.

(b) Funds may not be used to purchase food and beverages for meetings or program participants.

(c) Registration fees for conferences and other training sessions should be included in this category.

§62.55. Indirect Costs.

(a) "Indirect costs," as used in §62.47(a)(8) of this chapter, is defined as any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective. For additional guidelines on "indirect costs," entities should consult UGMS.

(b) The OAG will not allow indirect costs unless the organization submits a cost allocation plan approved by a cognizant agency and the costs are approved by the OAG.

(c) The OAG reserves the right to limit indirect costs charged to a contract regardless of an applicant's cost allocation plan.

§62.56. Unallowable Costs.

(a) OAG contract funds may not be used for the following:

(1) to pay overtime, out-of-state travel, dues, or lobbying;

(2) to purchase food and beverages for meetings or program participants;

(3) to fund the purchase of vehicles; or

(4) to purchase promotional items or recreational activities.

(b) Funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within the RFA.

§62.57. Assurances.

(a) The contractor agrees to and will comply with all terms and provisions of a contract, including but not limited to the following:

(1) Description of services;

(2) Reports as requested by the OAG;

(3) Standards for financial and programmatic management;

(4) Audit requirements;

(5) Terms and conditions of reimbursement;

(6) Confidentiality and use of client and related records;

(7) Copyrights, publications and patents; and

(8) Record retention and inspection.

(b) The contractor agrees to and will comply with all relevant state and federal laws including, but not limited to, those related to:

(1) Civil Rights Act;

(2) Rehabilitation Act;

(3) Americans with Disabilities Act;

(4) Equal Employment Opportunity;

(5) Debarment and Suspension;

(6) Smoke-Free Workplace;

(7) Drug-Free Workplace;

(8) Lobbying Disclosure;

(9) Immigration;

(10) Safety Standards;

(11) Public Information Act; and

(12) Health Insurance Portability and Accountability Act.

§62.58. SAPCS Contract Forms.

(a) Unless otherwise stated, all required forms will be provided by the OAG.

(b) Failure to submit the required forms provided by the OAG in a timely manner may result in sanctions as stated in §62.67 of this chapter.

§62.59. Authorized Signator.

(a) A contractor must designate an authorized signator. The authorized signator is the person authorized to apply for, accept, decline, or cancel the contract for the applicant organization. This person signs all contract adjustment requests, inventory reports, progress reports, and financial reports as well as any other official documents related to the OAG contract. This person may be, for example, the executive director of the organization, board president, or a county judge, mayor, city manager, assistant city manager, or designee authorized by the governing body.

(b) Any changes in the authorized signator must be submitted in writing to the OAG immediately.

(c) An authorized signator may designate alternate persons to sign certain contract documents.

§62.60. Financial Reporting and Reimbursement.

(a) Because contracts awarded under this chapter are reimbursement-only contracts, a contractor must submit financial status reports and invoices, as directed by the OAG.

(b) A contractor must ensure that its final invoice is received no later than the 45th calendar day after the end of the contract period (liquidation date). If this date falls on a weekend or a holiday, then the OAG will honor receipt on the following business day. On the liquidation date, if contract funds are on hold for any reason, the funds will lapse and cannot be recovered by the contractor.

(c) Invoices received after the above deadline may not be paid by the OAG.

(d) If necessary, the OAG may allow an extension beyond the established deadline.

§62.61. Performance Reporting.

(a) A contractor must submit monthly statistical reports in the manner and form determined by the OAG. Failure to do so may result in the OAG placing a contractor on financial hold and may affect future funding requests.

(b) The OAG, or its designee, may assess contract effectiveness through review of required statistical reports, on-site visits, and/or desk reviews. Information relating to monthly performance reporting must be maintained by the contractor and must be available for review by the OAG or its designee.

(c) The OAG will provide quarterly concurrence reports to contractors to verify reported data. A contractor must review the quarterly reports, verify the data, and submit documentation of concurrence or correction.

§62.62. Inventory Reporting.

A contractor must maintain an inventory report of all equipment purchased as part of the contract on file at its principal office. The contractor must complete and submit to the OAG an inventory of contract property no later than the 60th calendar day after the end of the contract period. If this date falls on a weekend or holiday, the OAG will honor receipt on the following business day.

§62.63. Contract Adjustments.

(a) Within each fiscal year, a contractor may transfer funds between direct cost line items in different approved budget categories, not to exceed a cumulative total of ten percent of the approved contract budget during that year, without requesting a contract adjustment from the OAG.

(b) If it becomes necessary to move funds that are greater than ten percent of the total budget between existing budget categories, revise the scope or target of the contract, add new budget categories, or alter contract activities, a contractor must first request and receive approval from the OAG for a contract amendment.

(c) The OAG will allow only one contract amendment per state fiscal year unless:

(1) the contractor demonstrates circumstances that the OAG deems adequately extenuating; or

(2) the OAG requests the contract adjustment.

§62.64. Copyrights.

A contractor may use funds from the contract to produce original books, manuals, films, or other original material. The contractor may copyright or patent such material subject to the royalty-free, non-exclusive, and irrevocable license to use the work and any modification to the work which is hereby granted to and retained by the federal government, the OAG, and Texas state government.

§62.65. Procurement, Property Management, and Contract Oversight Procedures.

A contractor shall use the procurement procedures, property management procedures, and contract oversight guidelines set forth in UGMS and all applicable OMB circulars. A contractor must comply with UGMS and all applicable federal, state and local laws and regulations.

§62.66. Maintenance of Records.

(a) The contractor shall maintain adequate records to support its charges, procedures, and performances to the OAG for all work related to the contract. The contractor also shall maintain such records as are deemed necessary by the OAG and auditors of the State of Texas, the United States, or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to the contract. Such records include, but are not limited to:

(1) A copy of any required licenses or certifications of any individual who holds a contract-funded position;

(2) Time and attendance records for all contract-funded positions. These records must include the number of hours worked each day for the contract, the signature of the employee, and the signature of the supervisor. Any further documentation requested by the OAG shall be maintained by the contractor for audit and monitoring purposes;

(3) Documentation showing that the terms of any contract-funded, third-party contracts are being met;

(4) Adequate travel logs that include, at a minimum, dates, destinations, mileage amounts, expenses, and explanations of contract-related activities performed during the travel;

(5) Verification of completion of training and other related records;

(6) Records of the disposition, replacement, or transfer of any equipment purchased with contract funds. The retention period for these records begins on the date of the disposition, replacement or transfer; and

(7) Records of any litigation, claims, or audits involving the contract.

(b) The contractor shall maintain and retain for a period of four (4) years after the submission of the final expenditure report all such records as are necessary to fully disclose the extent of services provided under the contract. However, if four years after the submission of the final expenditure report, the records are subject to or implicated in pending litigation, claims, or audits, they must be retained until those matters have been fully and finally resolved.

(c) Records may be retained in an electronic format.

§62.67. Sanctions.

(a) Reimbursement for contract-related expenses is contingent upon a contractor's strict compliance with these rules, related requirements, and OAG procedures. Any failure to comply may result in the imposition of temporary or permanent sanctions or both.

(b) The OAG may place the contractor on probationary status and require the Sexual Assault Program to correct any deficiencies, undertake certain actions, and document such actions, including but not limited to:

(1) Additional Monitoring-accelerated or more detailed monitoring of the program;

(2) Written Corrective Action Plan-a detailed written plan with applicable time frames, to remedy the programmatic or contractual deficiency;

(3) Technical or Management Assistance-obtaining professional assistance to remedy the programmatic or contractual deficiency;

(4) Prior Approval-approval by the OAG prior to expenditure of contract funds; and/or

(5) Additional Reporting-additional, more detailed financial and/or programmatic reports or documentation.

(c) The OAG will notify a contractor if grounds for sanctions exist.

(d) If the contractor receives notice of grounds for sanctions and subsequently provides satisfactory evidence that the deficient condition has been corrected, the OAG may discontinue the sanctions.

§62.68. Suspension of Funds and Termination of SAPCS Contracts.

(a) If a contractor is notified of sanctions and fails to correct the deficient condition(s) in the time and manner as indicated by the OAG, the OAG may:

(1) Demand repayment of funds from the contractor to the OAG;

(2) Withhold or suspend reimbursement of all or part of the awarded funds pending compliance by the contractor or its subcontractor(s);

(3) Reduce the amount of the contract or award; or

(4) Terminate the contract. The OAG may require the contractor to return any equipment purchased with contract funds.

(b) If the contractor remains out of compliance with these rules, related requirements or OAG procedures, the OAG may deny future funding to the contractor.

§62.69. Appeal of Suspension of Funds or Termination of SAPCS Contracts.

(a) The OAG's decision to suspend funds or terminate contracts may be appealed by submitting a written request for a hearing no later than 10 days after the receipt of the OAG notification letter.

(b) The written request for a hearing must include:

(1) the reason for the appeal;

(2) documentation or information to support the appeal; and,

(3) if necessary, the OAG must be granted access to information relevant to the appeal.

(c) The applicant is responsible for all costs incurred as a result of requesting a hearing, and those costs will not be reimbursed by the OAG.

(d) The OAG shall respond in writing to a request for a hearing with the following:

(1) instructions regarding the hearing process; and,

(2) a request for additional documentation if necessary.

(e) The applicant has 30 days from the date of receipt of the OAG's request to supply additional documentation.

(f) The applicant shall receive a minimum of 10 days notice of their hearing date, time, and location.

(g) The hearing will be conducted by a designee of the Attorney General and shall take place either in person in Travis County, Texas, by telephone, or by videoconference, at the discretion of the OAG.

(h) At the hearing, the applicant may present testimony and documentation to refute suspension of funds or termination of contract by the OAG.

(i) Failure to appear or be available for the scheduled hearing, or failure to notify the OAG of an intended absence within 48 hours of the scheduled hearing, shall result in a final decision based on available information.

(j) As soon as practicable after the hearing the OAG will notify the applicant in writing of the final decision, including the reasons for the decision.

(k) In any proceeding under this chapter, the burden of proof is on the applicant to submit evidence showing that grounds for continuation of funding exist.

§62.70. Violations of Laws.

A contractor must immediately provide notification to the OAG and, if applicable, the local prosecutor's office, of any knowledge, suspicion, or evidence of any violation of law that affects or is related to the contract. Such violations include misappropriation of funds, fraud, theft, embezzlement, forgery, or any serious irregularity or noncompliance with the requirements of this chapter.

§62.71. Standards of Conduct.

(a) In making decisions affecting expenditures, a program receiving contract funds shall comply with the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396-2.30.

(b) Contract personnel and officials must avoid any action that results in or creates the appearance of:

(1) using their official positions for private gain;

(2) giving preferential treatment to any person;

(3) losing independent judgment or impartiality;

(4) making an official decision outside of official channels; or

(5) adversely affecting the confidence of the public in the integrity of the program or the OAG.

§62.72. Quality Assurance.

(a) Quality assurance reviews include programmatic monitoring, financial monitoring, and financial auditing.

(b) The OAG will conduct quality assurance reviews throughout the existence of a contract. A contractor must make all contract-related records available to OAG representatives unless the information is sealed by law.

(c) Quality assurance reviews may be on-site or desk reviews and may include any information that the OAG deems relevant to the contract.

(d) The OAG, or its designee, may make unannounced visits at any time.

(e) The OAG reserves the right to conduct its own audit or contract with another entity to audit any contractor.

(f) Based on the information gathered during monitoring or auditing, the OAG will issue a quality assurance report.

(g) A contractor must submit documentation to the OAG responding to any findings and questioned costs contained in the report.

(h) The quality assurance determination of the OAG is final and not subject to judicial review.

§62.73. Audit Standards.

(a) The OAG requires a contractor to conduct or undergo an annual audit of a contract, including sub-contracts, based on federal and state audit requirements and following audit standards set forth in UGMS and all applicable federal circulars.

(b) A contractor must submit to the OAG two copies of all audit reports, including audits as required in UGMS and all other audits that a contractor undergoes, regardless of the purpose. Such reports must be submitted to the OAG within 30 calendar days of completion.

(c) OAG contract funds may only be used for the fair and reasonable share of audit costs required by the OAG, in accordance with applicable federal and state cost principles.

§62.74. Advocate Training Certification.

(a) Advocate Training Certification is a credential available to sexual assault advocate training programs that are funded by the OAG. This chapter establishes minimum standards for training programs that prepare advocates to provide direct services to survivors of sexual assault. Pursuant to Texas Code of Criminal Procedure Article 56.045, these services include the right of a survivor of sexual assault receiving a forensic exam to have an advocate who has completed a certified sexual assault training program present and to be provided support during that exam.

(b) This chapter describes:

(1) the required training content, processes, and procedures for certification of a sexual assault training program; and,

(2) the responsibilities of the OAG in administering this program.

§62.75. Definitions for an Advocate Training Program.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise:

(1) Classroom training--Training that is delivered to a group of people (more than one person) by at least one instructor/facilitator.

(2) Continuing education--Education arranged or approved by the local program to enhance direct service advocates' knowledge of

sexual assault or skills in providing direct services to survivors. Continuing education is above and beyond the initial 40 hours of certified training.

(3) Direct service advocate--An employee or volunteer, at least 18 years of age, who has completed training certified through the OAG's Sexual Assault Prevention and Crisis Services program, and has been approved by the local program to provide direct services to survivors of sexual assault and their family members and/or friends.

(4) Direct services--Services provided to survivors of sexual assault and their family members and/or friends.

(5) Executive Director--The board liaison and chief staff person responsible for the overall fiscal management, program development, and staff supervision of a non-profit agency.

(6) Local program--A provider of services for survivors of sexual assault in Texas that receives funding from the OAG.

(7) On-the-job training (OJT)--Training related to the tasks direct service advocates perform on behalf of the local program. OJT includes observation by the trainee of an experienced direct service advocate performing these tasks and/or performance of these tasks by the trainee under the supervision of an experienced direct service advocate.

(8) Self-study--Assigned learning that occurs outside the traditional classroom environment that may include, but is not limited to reading material, film, and/or audio tapes. Reading 15 standard, letter-size pages, viewing one hour of film, or listening to one hour of audio-tape amounts to one hour of self-study training.

(9) Sexual assault services coordinator--A person or persons designated by the Executive Director to oversee the training and supervision of employees and volunteers who will provide direct services to survivors of sexual assault. This person or persons must have completed:

(A) Forty hours of training for direct service advocates approved by the local program Executive Director; and

(B) Fifty hours of direct client services.

(10) Survivor--A person who has experienced sexual assault.

§62.76. Policy and Training Requirements for an Advocate Training Program.

(a) Local programs must have written requirements that include:

(1) Training requirements for direct service advocates;

(2) Testing requirements for direct service advocates;

(3) Continuing education requirements for direct service advocates; and

(4) Confidentiality of client information.

(b) Local programs must deliver 40 hours of training for direct service advocates within a three month time frame on the following subject areas as defined by the Sexual Assault Advocate Training Certification Guidelines:

(1) Sexual assault dynamics. Eight hours of training must be delivered on sexual assault dynamics. A maximum of two hours can be self-study. Sexual assault dynamics must include the following topics:

(A) Historical perspective of sexual assault;

(B) Gender socialization;

(C) Definition of sexual assault;

(D) Sexual assault myths and facts;

(E) Effects of sexual assault on survivors;

(F) Survivor profile;

(G) Offender profile;

(H) Significant others; and

(I) Sexual assault statistics.

(2) System response. Nine hours of training must be delivered on system response. A maximum of three hours can be self-study. System response must include a tour of the medical facility where forensic exams are performed and the following topics:

(A) Child and adult protective services;

(B) Emergency room protocol;

(C) Medical/forensic exam;

(D) Role of SANE (when applicable);

(E) Pregnancy prevention for survivors;

(F) Sexually transmitted infections;

(G) Drug facilitated sexual assault;

(H) Overview of the criminal justice system;

(I) Role of law enforcement;

(J) Laws related to sexual assault;

(K) Legal resources and remedies;

(L) Victim's bill of rights;

(M) Victim impact statement; and

(N) Overview of Crime Victim's Compensation.

(3) Working with survivors. Ten hours of classroom training must be delivered on working with survivors. Working with survivors must include the following topics:

(A) Confidentiality;

(B) Ethics;

(C) Role of an advocate;

(D) Secondary victimization;

(E) Stress and burnout;

(F) Self care;

(G) Self protection;

(H) Communication and active listening skills;

(I) Crisis intervention;

(J) Suicide assessment skills; and

(K) Role play.

(4) Local program information. Three hours of classroom training must be delivered on local program information. The sexual assault services coordinator may determine the content of local program information.

(5) On-the-job training. Ten hours of training must be delivered on-the-job. Self-study is not allowed. On-the-job training must begin after the classroom and self-study portions of the training are

complete. The sexual assault services coordinator may determine the content of on-the-job training.

(c) Completion of the above training requirements must be documented in the individual, confidential personnel/volunteer files of direct service advocates.

(d) Local programs may allow direct service trainees to compensate for absenteeism by watching the video-recorded version of the missed training sessions at the local center or through other appropriate means. Up to six hours of the certified training content in "Sexual Assault Dynamics," "System Response" and "Local Program Information" may be compensated for in this way.

§62.77. Trainers for an Advocate Training Program.

(a) Training must be delivered by:

(1) Local program staff with at least one year of experience in the topic presented, unless the topic is crisis intervention, in which case, two years of crisis intervention experience is required; and/or

(2) Volunteers with at least 500 documented hours of service, of which 100 of those hours must be direct services; and/or

(3) An expert in the field.

(b) Programs unable to secure trainers who meet these requirements may make a written request for a waiver from the OAG.

§62.78. Test Requirements for an Advocate Training Program.

(a) Upon the completion of all classroom and self-study training, a test must be administered to the trainees.

(b) Local programs must require direct service advocates to pass the test with a score of 70% or higher to be eligible to provide direct services.

(c) The test must be a minimum of 50 questions.

(d) The test must track the content of the training.

(e) The test must be approved by the sexual assault services coordinator.

(f) Tests must be retained in the advocate's confidential personnel/volunteer file.

§62.79. Continuing Education for an Advocate Training Program.

(a) Local programs must require their direct service advocates to accrue at least six hours of continuing education each year.

(b) Continuing education can be delivered in the classroom or as self-study.

(c) Academic credits earned at institutions of higher education may be counted toward continuing education at the discretion of the sexual assault services coordinator.

(d) Documentation of the required continuing education must be kept in the direct service advocate's file.

§62.80. Use of Advocates for an Advocate Training Program.

(a) Programs with a certified training program may only use advocates who have attended a certified training to provide direct services.

(b) The only allowed exceptions to this requirement are:

(1) Advocates who have attended a sexual assault basic training before the program became certified, and who have provided at least 25 hours of direct service in the previous twelve months; and

(2) New advocates who have prior experience and/or training in providing direct services to survivors of sexual assault. These advocates must pass the certified training test with a minimum score of 85% prior to providing direct services.

§62.81. Application Process for an Advocate Training Program.

(a) An application for training certification must be submitted on an OAG approved form to the Sexual Assault Prevention and Crisis Services program (SAPCS) of the Office of the Attorney General, P.O. Box 12548, MC011-1, Austin, Texas 78711-2548.

(b) Applications will be reviewed by the OAG for compliance with certification guidelines and rules.

(c) Site visits and phone interviews may be conducted by the OAG to clarify application information, or for other reasons as determined by the OAG.

(d) The OAG will notify applicants, in writing, of approval or disapproval of the request for certification within 120 calendar days of receipt.

(e) A program approved for certification will receive a written notice of their two-year certification.

(f) A program not approved for certification may request a hearing pursuant to §62.85 of this chapter.

(g) The OAG may request additional information or corrections to complete the review of the application. The local program will have 45 days from the date of the request to submit corrections or an amended application with the requested information. A program may resubmit the corrections twice annually.

§62.82. Verification.

The OAG shall verify that the requirements of certification are maintained through the contract monitoring process, site visits, or any other method deemed appropriate by the OAG.

§62.83. Certification Renewal of an Advocate Training Program.

Programs must reapply every two years to maintain certification.

§62.84. Suspension, Probation, or Decertification of an Advocate Training Program.

The OAG may place a certified training program on probation or suspension, or decertify the local program's training for non-compliance with the requirements stated in this chapter, or for other reasons determined appropriate by the OAG.

§62.85. Appeal of Denial, Suspension, or Decertification of an Advocate Training Program.

(a) The OAG's decision to deny, suspend, or decertify an Advocate Training Program may be appealed by submitting a written request for a hearing no later than 20 days after the receipt of the OAG notification letter.

(b) The written request for a hearing must include:

(1) the reason for the appeal;

(2) documentation or information to support the appeal; and,

(3) if necessary, the OAG must be granted access to information relevant to the appeal.

(c) The applicant is responsible for all costs incurred as a result of requesting a hearing, and those costs will not be reimbursed by the OAG.

(d) The OAG shall respond in writing to a request for a hearing with the following:

(1) instructions regarding the hearing process; and,

(2) a request for additional documentation if necessary.

(e) The applicant has 30 days from the date of receipt of the OAG's request to supply additional documentation.

(f) The applicant shall receive a minimum of 10 days notice of their hearing date, time, and location.

(g) The hearing will be conducted by a designee of the Attorney General and shall take place either in person in Travis County, Texas, by telephone, or by videoconference, at the discretion of the OAG.

(h) At the hearing, the applicant may present testimony and documentation to refute suspension of funds or termination of contract by the OAG.

(i) Failure to appear or be available for the scheduled hearing, or failure to notify the OAG of an intended absence within 48 hours of the scheduled hearing, shall result in a final decision based on available information.

(j) As soon as practicable after the hearing the OAG will notify the applicant in writing of the final decision, including the reasons for the decision.

(k) In any proceeding under this chapter, the burden of proof is on the applicant to submit evidence showing that grounds for continuation certification exist.

§62.86. Prehearing Conference for an Advocate Training Program. At any time before a hearing is conducted, the OAG may request a prehearing conference with the applicant, either in person, by telephone, or by video conference in order to establish whether a hearing on denial of certification, placement of a training program on probation or suspension, or revocation of certification of the training program is necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502130

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: July 10, 2005

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110.

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.12

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.12, concerning contracts for 9-1-1 services. The proposed amendment removes an outdated reference to the 76th Texas Legislature, correct an erroneous citation to the Health and Safety Code, and removes the example contract from the current §251.12. As amended, §251.12 will more accurately reflect current law and reduce the delay in executing the biennial contracts by allowing CSEC to incorporate any new Legislative requirements without having to modify the section. Once removed from §251.12, the example contract will be submitted for comment to stakeholders and a final version placed in a CSEC Program Policy Statement.

Paul Mallett, CSEC's executive director, has determined that for each year of the first five years that the amended section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Mallett has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing the amended section will be better accountability of funds and program reporting requirements. No historical data is available, however, there is no direct impact on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the proposed rule may be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amended section is proposed pursuant to Health and Safety Code, Chapter 771, §§771.055, 771.056, 771.071, 771.0711, 771.072, 771.073, 771.075, 771.078; and Title 1 Texas Administrative Code, Part 12, which authorizes the Commission to adopt rules, policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

No other statute, article, or code is affected by the proposed amendment.

§251.12. Contracts for 9-1-1 Services.

(a) Purpose. In accordance with Chapter 771 of the Texas Health and Safety Code, [~~as revised and amended by HB 1983 passed by the 76th Texas Legislature,~~] this rule shall provide the standard provisions for contracts between the Commission on State Emergency Communications (Commission) and Regional Planning Commissions (RPC) for the provisioning of 9-1-1 service.

(b) Background. The Commission shall contract with each RPC for the provision of 9-1-1 services. Each contract shall substantially conform to the standard contract form, in accordance with Commission policies and procedures[~~set forth by way of example in subsection (d) of this section~~].

(c) Per Texas Health and Safety Code, §771.078(c) [~~Chapter 771.088(c)~~], contracts under this section must provide for:

(1) the reporting of financial information regarding administrative expenses by RPCs in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in each RPC's service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of answering points and the creation of new answering points;

(5) quarterly disbursements of money due under the contract, except as provided by paragraph (6) of this subsection;

(6) the Commission to withhold disbursement to a RPC that does not follow a standard imposed by the contract, a Commission rule, or a statute; and

(7) a means for the Commission to give an advance on a quarterly distribution under the contract to a RPC that has a financial emergency.

~~[(d) The contract described in subsection (b) of this section shall substantially conform to the following standard contract form:]~~ ~~[Figure: 1 TAC §251.12(d)]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502159
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 305-6933

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CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.1, concerning the statewide 9-1-1 Equalization Surcharge (the surcharge) to be assessed to each customer receiving intrastate long-distance service except those specifically exempted by law. The proposed amendment raises the surcharge from 0.6% to 1.0%; makes applicable the rounding methodology found in Texas Tax Code §151.053; makes applicable Texas Tax Code §151.025 when intrastate long distance services are not billed separately on a customer's bill; and makes two minor stylistic changes to the section. Section 255.1, with all of the foregoing amendments except for the increase in the surcharge, was previously posted for comment in the February 4, 2005, issue of the *Texas Register* but was not acted upon by CSEC.

Mr. Paul Mallett, CSEC's executive director, has determined that for each of the first five years that the amended section is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended section. Mr. Mallett and CSEC Staff have estimated that a surcharge of 1% will generate an estimated $8.98 million above the Comptroller of Public Accounts (Comptroller) $25.5 million estimate of the surcharge for Fiscal Years 2006-07. Rider #4 to CSEC's appropriation bill for Fiscal Years 2006-07 authorizes CSEC to spend up to $13.8 million in excess surcharge revenues to support local 9-1-1 and the statewide Poison Control Network. Of the estimated $8.98 million, CSEC Staff estimates that approximately $7.6 million will be made available to the Councils of Government to reimburse them for local 9-1-1 system related expenses, the remaining amount will go to the Poison Control Network.

Mr. Mallett has also determined that for each year of the first five years the amended section is in effect, the public benefits will be to further increase the reliability of the Councils of Government's 9-1-1 call centers and the Poison Control Network. The amended section is estimated to have a statewide cost of $4.49 million per year or 20.4 cents per person per year. While no historical data is available, the direct impact on small and large businesses is dependent on the amount of intrastate long distance that is billed on a per-call basis to the business. There is no anticipated local employment impact as a result of enforcing the section.

Comments on the amendment must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942.

The amendment is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.072, 771.073, 771.074, 771.075, 771.077, and 771.078; and Title 1 Texas Administrative Code, Part 12, which authorizes the Commission to adopt rules, policies and procedures prescribing the distribution and use of 9-1-1 funds for providing 9-1-1 service.

No other statute, article, or code is affected by the proposed amendment.

§255.1. Statewide 9-1-1 Equalization Surcharge.

An equalization surcharge is established in the amount of one percent (1.0%). Rounding of the surcharge amount shall be in compliance with Texas Tax Code §151.053. [~~6/10 of 1% (0.60%), the amount to be rounded up to the next whole one cent ($0.01) in the case of fractions.~~] This surcharge will be assessed to each customer receiving intrastate long-distance service, except those exempted by the Texas Health and Safety Code, §771.074. The surcharge shall be applied to the total amount for intrastate long-distance service charged by the customer's [~~long-distance~~] service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law. Texas Tax Code §151.025 shall apply when intrastate long distance services are not billed separately on a customer's invoice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502160
Paul Mallett
Executive Director
Commission on State Emergency Communications
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 305-6933

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.9, concerning the Qualified Contract Policy. This section is proposed to address the procedure for administering requests for qualified contracts.

Ms. Edwina P. Carrington, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Carrington has also determined that for each year of the first five-years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for more meaningful public input to the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Emily Price, Multifamily Housing Specialist, Multifamily Finance Production Division, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711-3941, emily.price@tdhca.state.tx.us, or by fax 512/475-0764, within thirty days of this notice.

This section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§1.9. Qualified Contract Policy.

(a) Purpose. Pursuant to §42(h)(6)(E) of the Internal Revenue Code, after the end of the 14th year of the compliance period, the owner of a development utilizing housing tax credits can request that the allocating agency find a buyer at the qualified contract price. If a buyer can not be located within one year, the extended use commitment will expire. This rule provides the procedures for the submittal and review of the qualified contract requests.

(b) Definitions. Many of the terms used in this section are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP". Those terms that are not defined in the QAP or which may have another meaning when used in this section shall have the meaning set forth in this subsection unless the context clearly indicates otherwise.

(1) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of Treasury or the Internal Revenue Service.

(2) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the credit period pursuant to the Code, §42(i)(1).

(3) Department--The Texas Department of Housing and Community Affairs.

(4) Extended Use Period--The period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Initial Affordability Period.

(5) Initial Affordability Period--The Compliance Period or such longer period as shall have been elected by the owner as the minimum period for which units in the development shall be retained for low-income tenants and rent restricted, as set forth in the LURA.

(6) Land Use Restriction Agreement (LURA)--An agreement between the Department and the owner which is binding upon the owner's successors in interest, that encumbers the development with respect to the requirements of Chapter 2306, Texas Government Code, and the requirements of the Code, §42.

(7) One Year Period (1YP)--Period commencing on the date on which the Department and the owner agree to the Qualified Contract price in writing and lasting twelve calendar months.

(8) Qualified Contract (QC)--A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURA) of the calculation as defined within §42(h)(6)(F) of the Code.

(9) Qualified Contract Price (QC Price)--Calculated purchase price of the development as defined within §42(h)(6)(F) of the Code and as further delineated in subsection (g) of this section.

(10) Qualified Contract Request (Request)--A request containing all information and items required by the Department.

(11) Qualified Purchaser--Proposed purchaser of the development who meets all eligibility and qualification standards stated in the QAP of the year the request is received. The purchaser must also attend, or assign another individual to attend, the Department's Property Compliance Training.

(c) Eligibility. An owner may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, following the Department's determination that the owner is eligible, as provided in subsection (f) of this section. The Initial Affordability Period starts concurrently with the credit period; therefore, beginning at placement in service or deferred until the beginning of the next tax year, if there is an election. Unless the owner has elected an Initial Affordability Period longer than the Compliance Period, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the owner shall have elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(d) Preliminary Qualified Contract Request. An owner may file a preliminary Qualified Contract Request (Pre-request) any time after the end of the year preceding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (c) of this section, the Pre-request will be used to determine the following:

(A) the property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the property;

(B) there is not a right of first refusal connected to the property;

(C) the Compliance Period has not been extended in the LURA; and

(D) the owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Owner must submit:

(A) Preliminary Request Form;

(B) $250 nonrefundable processing fee;

(C) copy of recorded LURA;

(D) first years 8609s for all buildings showing Part II completed;

(E) documentation from original application regarding right of first refusal, if applicable; and

(F) local code compliance report within the last 12 months or HUD certified UPCS inspection.

(3) The Pre-request will not bind the owner to submit a Request and does not start the 1YP. A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the owner stating that they are eligible to submit a Request.

(e) Right of First Refusal. If the owner elected at the time of application to provide a right of first refusal, all requests for right of first refusal submitted to Department, regardless of existing regulations, must adhere to this process.

(1) If at any time following the end of the Compliance Period or Initial Affordability Period, as applicable, the owner shall determine to sell the development and the owner has agreed to provide a right of first refusal to purchase the property for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"), the right of first refusal shall be subject to the following terms.

(A) Upon the earlier to occur of:

(i) the owner's determination to sell the Development, or

(ii) the owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the owner determines that it will sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period or Initial Affordability Period, as applicable. If the owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the owner intends to sell the Development. If the Development is already within two years of the expiration of the Compliance Period or Initial Affordability Period, as applicable, and the owner intends to sell the Development at the end of the Compliance Period or Initial Affordability Period, as applicable, the two year period referenced in subparagraph (B) of this paragraph will begin when the owner files a Notice of Intent.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department,

(ii) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) through (iii) of this subparagraph (within the period(s) appropriate to such organization), the owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) through (iii) of this subparagraph (within the period(s) appropriate to such organizations), the owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) the end of the Compliance Period or Initial Affordability Period, as applicable, or

(ii) two years from delivery of a Notice of Intent, the owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the owner to execute such a sale or by obtaining an order for specific performance of such obligation or by

such other means or remedy as shall be, in the Department's discretion, appropriate.

(2) The owner must submit evidence of the calculation of the Minimum Purchase Price with the Notice of Intent.

(f) Qualified Contract Request. An owner may file a Qualified Contract Request (Request) anytime after approval that the owner is eligible to submit a Request has been received in writing from the Department.

(1) The documentation that must be submitted with a Request includes:

(A) A completed application and certification.

(B) The qualified contract price calculation worksheets completed by a third party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome.

(C) A thorough description of the Development, including all amenities.

(D) A description of all income, rental and other restrictions, if any, applicable to the operation of the Development.

(E) A current title report.

(F) A current appraisal consistent with 10 TAC §1.34.

(G) A current Phase I Environmental Site Assessment (Phase II if necessary) consistent with 10 TAC §1.35.

(H) A current property condition assessment consistent with 10 TAC §1.36.

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months.

(J) The three most recent consecutive annual operating statements.

(K) A detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website).

(L) A current and complete rent roll for the entire property.

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included.

(N) If any portion of the land or improvements are leased, copies of the leases.

(O) Nonrefundable processing fee of one fourth of one percent of the QC Price determined by the CPA.

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (i) of this section, the owner shall contract with a broker approved by the Department to market and sell the property. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the owner in writing of the acceptance or rejection of the owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a Qualified Contract. The Department's rejection of the owner's QC Price calculation will be processed in accordance with subsection (h) of this section and the 1YP will commence as provided therein.

(g) Determination of Qualified Contract Price. The CPA contracted by the owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code and the following guidelines.

(1) Distributions to the owner include any and all cash flowing to the owner, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the development.

(2) All equity contributions will be adjusted based upon the lesser of the consumer price index or five percent (5%) for each year, from the end of the year of the contribution to the end of year 14 or the end of the year of the request for a Qualified Contract Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month.

(3) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of owner distributions, equity contributions and/or any other element of the QC Price.

(4) The QC Price calculation is not the same as the Minimum Purchase Price calculation for the right of first refusal.

(h) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the owner, the Department may engage its own CPA to perform a QC Price calculation. Cost of such service will be paid for by the owner. If an owner disagrees with the QC Price calculated by the Department, an owner may appeal in writing. A meeting will be arranged with representatives of the owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and owner have agreed to the QC Price in writing.

(i) Marketing of Property.

(1) By submitting a Request, the owner grants the Department the authority to market the development and provide development information to interested parties. Development information will consist of pictures of the development, location, amenities, number of units, age of building, etc. Owner contact information will also be provided to interested parties. The owner is responsible for providing staff to assist with site visits and inspections. Marketing of the development will continue until such time that a Qualified Contract is presented or the 1YP has expired.

(2) Notwithstanding subsection (f)(3) of this section, the Department reserves the right to contract directly with a third party in marketing of the development. Cost of such service, including a broker's fee not to exceed 6%, will be paid for by the existing owner.

(3) The Department must have continuous cooperation from the owner. Lack of cooperation will cause the process to cease and the owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the owner include but are not limited to:

(A) allowing access to the property and tenant files;

(B) keeping the Department informed of potential purchasers; and

(C) notifying the Department of any offers to purchase.

(4) A prospective purchaser must complete all exhibits required for an ownership transfer request. The Department will then assess if the prospective purchaser is a Qualified Purchaser.

(j) Presentation of a Qualified Contract.

(1) If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

(2) Although the owner is obligated to sell the development for the QC Price pursuant to a Qualified Contract, the consummation of such a sale is not required for the LURA to continue to bind the development for the remainder of the extended use period. Once the Department presents a Qualified Contract to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound by the provisions of the LURA.

(3) The Department will attempt to procure a QC for the acquisition of the low income portion of any project only once during the extended use period.

(4) If the transaction closes under the contract, the new owner will be required to fulfill the requirements of the LURA for the remainder of the extended use period.

(5) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three-year period commencing on a the termination of the extended use period, the owner may not evict or displace tenants of low-income units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three-year time frame.

(6) Prior to the Department filing a release of the LURA, the owner must correct all instances of noncompliance with the physical condition of the property.

(k) Compliance Monitoring during Extended Use Period. For developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy for more information.

(l) Waiver and Amendment of Rules.

(1) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that a waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(2) The Department may amend this Rule to comply with IRS guidance, if and when issued.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502162
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 475-3726

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181, §25.184

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 16 TAC §25.184 are not included in the print version of the Texas Register. The figures are available in the on-line issue of the June 10, 2005, issue of the Texas Register.)

The Public Utility Commission of Texas (commission) proposes amendments to §25.181 and §25.184. Sections 25.181(e), (h), and (i) will expand the Load Management Standard Offer Program; §25.184(c) will add a Solar Water Heater Market Transformation Program to the Energy Efficiency Implementation Project; §25.184(d)(2) will update the stipulated values and measurement and verification procedures; and §25.184(d)(3) will update deemed savings lighting tables.

Theresa Gross, Retail Market Analyst, Electric Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Gross has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing these sections will be the following: the addition of a market transformation program for solar water heaters will allow utilities to operate programs to make this technology available to customers; expansion of the Load Management Program will reduce demand for electricity during peak consumption periods, resulting in improved reliability and lower costs for electricity; the deemed savings updates for the lighting tables will more accurately reflect current technology and the resulting energy savings; the inclusion of the measurement and

verification procedures and stipulated values will facilitate measurement and verification of commercial and industrial energy efficiency programs.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

Ms. Gross has also determined that for each year of the first five years the proposed sections are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on July 29, 2005. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 30 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 30331.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.905 which require(s) the commission to provide oversight and adopt rules and procedures, as necessary, to ensure that the goal for energy efficiency is achieved.

Cross Reference to Statutes: Public Utility Regulatory Act §39.905.

§25.181. Energy Efficiency Goal.

(a) - (d) (No change.)

(e) Cost-effectiveness standard.

(1) (No change.)

(2) Avoided cost. Incentives shall be set as a percentage of the avoided cost. The avoided cost shall be the estimated cost of a new gas turbine.

(A) - (B) (No change.)

[~~(C) The commission may adjust the cost effectiveness standard prescribed in subparagraphs (A) and (B) of this paragraph by using an environmental adder up to 20% for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ). The environmental adder is available only for targeted energy efficiency projects that would not be implemented without the adder.~~]

(3) Incentive Levels

(A) The incentive levels for each customer class shall be a percentage of the avoided cost set forth in subsection (e) of this section. The incentive levels for individual programs shall be set by each utility subject to the incentive ceilings outlined below and other provisions of this section. Utilities may adjust incentive levels for individual programs during the program year, but such adjustments must be clearly publicized in the program application guidelines. Except as provided in subparagraphs (B) through (D) of this paragraph, incentive levels for standard offer programs may not exceed:

(i) 100% for hard-to-reach customers.

(ii) 50% for other residential and small commercial customers.

(iii) 35% for large commercial and industrial customers, except for load management programs which may not exceed 25%.

(B) The utility may apply an environmental adder of up to 20% above the cost effectiveness standard prescribed in subparagraph (A) of this paragraph for targeted projects conducted in an area that is not in attainment for air emission that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ). The environmental adder is available only for targeted energy efficiency projects that would not be implemented without the adder. Projects receiving incentives under subparagraphs (C) or (D) of this paragraph are not eligible to receive the environmental adder.

(C) For load management projects implemented in areas of transmission or distribution system constraints outside of the ERCOT power region, the utility may identify areas where transmission or distribution system enhancements could potentially be avoided or deferred or where congestion management costs could be reduced as a result of load management. The utility may increase the incentive for targeted load management projects in such areas. The increased incentive is available only for targeted load management projects that would not be implemented without the higher incentive. The incentive for load management programs targeted to transmission or distribution constrained areas shall not exceed:

(i) Large Commercial and Industrial projects: 35%.

(ii) Residential and Small Commercial projects: 55%.

(D) The ERCOT independent system operator on an annual basis shall identify areas where transmission system enhancements could potentially be avoided or deferred or where congestion management costs could be reduced as a result of load management. Such information shall be provided by ERCOT to the utility and to the commission by July 1 of each year for the following year. In addition, the utility may identify areas where distribution system enhancements could potentially be avoided or deferred as a result of load management. The utility may increase the incentive for targeted load management projects in such areas. The increased incentive is available only for targeted load management projects that would not be implemented without the higher incentive. The incentive for load management programs targeted to transmission or distribution constrained areas shall not exceed:

(i) Large Commercial and Industrial projects: 35%.

(ii) Residential and Small Commercial projects: 55%.

(f) - (g) (No change.)

(h) Energy efficiency plans.

(1) (No change.)

(2) Energy efficiency plan. Each electric utility's energy efficiency plan shall describe how the utility intends to achieve the legislative mandate and the requirements of this section. Beginning January 1, 2002, the plan shall be on a calendar year cycle and shall project at least a four-year period. The plan shall propose an annual budget sufficient to reach the 10% legislative goal by January 1, 2004, and annually thereafter. Each electric utility's energy efficiency plan shall include:

(A) - (E) (No change.)

~~[(F) The incentive levels for each customer class shall be a percentage of the avoided cost set forth in subsection (e) of this section. The incentive levels for individual programs shall be set by each utility subject to the incentive ceilings outlined below and other provisions of this section. Utilities may adjust incentive levels for individual programs during the program year, but such adjustments must be clearly publicized in the program application guidelines. Until the commission adopts different ceilings for incentive levels, incentive levels for standard offer programs may not exceed:]~~

~~*[(i)* 100% for hard-to-reach customers.]~~

~~*[(ii)* 50% for other residential and small commercial customers.]~~

~~*[(iii)* 35% for large commercial and industrial customers.]~~

~~*[(iv)* 15% for load management programs.]~~

(F) [~~(G)~~] The proposed annual budget required to implement the utility's standard offer program, market transformation program, or both, broken out by program for each customer class, including hard-to-reach customers, and the amount for the small contractor set-aside pursuant to subsection (i)(4) of this section. The proposed budget should detail incentive payments, utility administrative costs, including the independent M&V expert, and the other administrative functions pursuant to subsection (i)(1) of this section, and the rationale and methodology used to estimate the proposed expenditures.

(G) [~~(H)~~] Savings achieved through programs for hard-to-reach customers shall be no less than 5.0% of the utility's total demand reduction goal.

(H) [~~(I)~~] Savings achieved through load management programs, including interruptible rates, may not exceed 30%[~~15%~~] of the utility's total demand reduction goal.

(I) [~~(J)~~] A discussion of the types of informational activities the utility plans to use to encourage participation in standard offer programs or market transformation programs, including the manner in which utilities will use to post notice of standard offer programs, market transformation programs, and any other facts that may be considered when evaluating a project.

(3) - (4) (No change.)

(i) Utility administration. Utilities shall administer standard offer programs, market transformation programs, or both, to meet the requirements of the energy efficiency goal in PURA §39.905. The cost of administration may not exceed 10% of the total program costs.

(1) - (2) (No change.)

(3) The utility shall compensate energy efficiency service providers for energy efficiency projects in accordance with the contract and the requirements of this section. An individual energy efficiency service provider and its affiliates may not receive more than 20% of the total incentive payments available for a particular standard offer program, unless the program is not fully subscribed after 180 days, and the utility has demonstrated that it has performed adequate outreach. This requirement is not applicable to a load management program.

(4) - (8) (No change.)

(j) - (p) (No change.)

§25.184. Energy Efficiency Implementation Project.

(a) - (b) (No change.)

(c) Templates. This section includes the following program templates:

(1) - (12) (No change.)

(13) Solar Water Heater Market Transformation Program.
Figure: 16 TAC §25.184(c)(13)

(d) Deemed Savings Estimates. This section includes the following Deemed Savings Estimates:

(1) (No change.)

(2) Measurement and Verification Guidelines and Stipulated Values.
Figure: 16 TAC §25.184(d)(2)

~~[(2) Deemed Savings, Installation & Efficiency Standards: Commercial Cooling Equipment.]~~
~~[Figure: 16 TAC §25.184(d)(2)]~~

(3) Standard Fixture Wattages.
Figure: 16 TAC §25.184(d)(3)

~~[(3) Commercial Lighting Tables.]~~
~~[Figure: 16 TAC §25.184(d)(3)]~~

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILER DIVISION

16 TAC §§65.20, 65.50, 65.60

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§65.20, 65.50, and 65.60 regarding licensing, certification, registration, and reporting requirements in the boiler program and responsibilities of the department.

Currently, boiler inspections in Texas are performed either by the insurance company that insures the boiler, or by a Department inspector in the case of an uninsured boiler. No other entities are permitted to perform boiler inspections. The Department rule at 16 Texas Administrative Code §§65.20(a)(2) requires boilers

to be inspected by the inspection agency "where the boiler is insured" and requires all uninsured boilers to be inspected by the Department. This rule effectively prohibits any private entity that is not an insurance company from becoming an authorized inspection agency.

The apparent rationale for the prohibition is that an insurer of the boiler has a vested financial interest in the boiler, and so the inspection is being performed by a person with a financial incentive to perform a thorough inspection. However, there is no requirement that a boiler be insured. Nor is there any requirement that an inspection agency insuring the boiler have a minimum dollar amount of liability. In practice, therefore, the entity performing the inspection may have little financial interest in the boiler.

The National Board of Boiler and Pressure Vessel Inspectors (NBBI), which is a private association that promotes national codes and standards for boiler inspections and accredits authorized inspection agencies, has revised its standards to allow non-insurers to become authorized inspection agencies. See the NBBI document "NB-369." In light of the changes to the NBBI standards, the Department has reconsidered the prohibition on non-insurers performing boiler inspections. The Department has concluded that safety of boilers would not be compromised by allowing non-insurers to perform inspections because such inspection agencies would have to meet the same qualifications and be subject to the same standards as insurer inspection agencies.

In the Department's opinion, the text of Chapter 755, Health and Safety Code does not require that authorized inspection agencies be insurers. Therefore, the Commission has the discretion to amend its rules to allow non-insurers to become authorized inspection agencies. The Board of Boiler Rules, which is an advisory body to the Commission, appointed a task force comprised of members of the boiler industry, including representatives of the insurance industry, owner/users, manufacturers of boilers, and Department inspectors to study the matter. The task force concluded that non-insurers should be allowed to become authorized inspection agencies and recommended the substance of these proposed amendments to the Board of Boiler Rules. The Board of Boiler Rules then approved the substance of the amendments.

The amendments in this proposed rulemaking would allow non-insurers to become authorized inspection agencies for boilers in Texas. These non-insurer inspection agencies would have to meet the same qualifications as traditional, insurer inspection agencies.

The amendments to §65.20 require that a boiler be inspected by the agency that has accepted responsibility for the inspection, rather than requiring inspection by the agency "where the boiler is insured." All other boilers would be inspected by the Department.

The amended language of §65.50 applies reporting requirements to non-insurer inspection agencies and consolidates language related to insurance risks.

The amendments to §65.60 remove references to insurance companies in the procedure for becoming an authorized inspector.

These rules are necessary to amend the boiler rules to allow non-insurers to become authorized inspection agencies, as recommended by the Board of Boiler Rules. The Department believes that restricting boiler inspections to insurance companies is no longer warranted and that the amended rules would promote the safety of boilers.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there may be some additional cost to the State due to a possible increase in the number of boiler inspections performed by the Department. The amendments would remove the requirement for an insurer to perform the inspection of an insured boiler, so the Department would be responsible for performing the inspection if the insurer chose not to perform the inspection and an inspection agency did not take responsibility for the inspection. However, the number of such additional inspections, if any, is expected to be minimal, and any increased cost to the Department would not be significant. In addition, any increase in cost would be offset by increased revenue from inspection fees. There is no anticipated fiscal impact on local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amended rules are in effect, the public benefit will be increased safety of boilers. The amendments would allow more inspection agencies to enter the market, which should help to ensure that more boilers are inspected in a timely manner.

Mr. Kuntz has determined that there will be no adverse economic effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51, which authorizes the Commission to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§65.20. Licensing/Certification/Registration Requirements.

(a) Inspection of all boilers.

(1) All boilers not exempted by the Texas Health and Safety Code Ann. §755.022 shall be inspected in accordance with the Texas Health and Safety Code Ann. §755.025 and/or §755.026, or with requirements specified under the applicable rules.

(2) Boilers shall be inspected by the inspection agency that has accepted responsibility for the inspection [~~where the boiler is insured~~]. All other [~~uninsured~~] boilers shall be inspected by the chief inspector or deputy inspector.

(b) - (i) (No change.)

§65.50. Reporting Requirements.

(a) Manufacturer's data reports. Manufacturer's data reports shall be filed by the manufacturer with the chief inspector and the National Board.

(b) Risks and Inspection Agreements [~~--new, canceled, or suspended~~].

[~~(1)~~] All inspection agencies shall notify the chief inspector, of all boiler risks or inspection agreements written, canceled, or not renewed within 30 days of the effective date. Immediate notification shall be made of all boiler risks rejected or suspended or inspection agreements cancelled or not renewed because of unsafe conditions. The inspection agency shall immediately notify the chief inspector and submit a report of the defects. Notification may be made electronically or manually using the format provided by the department. This notification shall list, by Texas boiler number, all objects affected by the notice.

~~[(2) If an authorized inspector, upon the first inspection of a new risk, finds conditions such that his inspection agency refuses insurance, the inspection agency shall immediately notify the chief inspector and submit a report of the defects.]~~

(c) - (h) (No change.)

§65.60. Responsibilities of the Department.

(a) Inspector's duties. Inspectors shall be regularly employed as an inspector and shall not engage in the sale of any article or device relating to boilers, pressure vessels, or other appurtenances.

(b) Commissions.

(1) Deputy inspectors.

(A) - (D) (No change.)

(2) Authorized inspector.

(A) Upon the request of an inspection agency [~~a boiler insurance company~~], authorized to do business in this state, a commission as an authorized inspector and an identifying commission card shall be issued by the executive director to an inspector in the employ of such inspection agency [~~insurance company~~] provided the inspector has successfully passed the examination as set forth in §65.20(g) of this title [~~(relating to Licensing/Certification/Registration Requirements)~~]. The identifying commission card shall be returned to the chief inspector when the inspector to whom the commission was issued is no longer in its employ. An inspector, commissioned as provided in this section, shall be entitled to another commission upon leaving the employ of one inspection agency [~~insurance company authorized to insure boilers in this state~~] and entering the employ of another such agency [~~company~~] without examination, provided the executive director is notified immediately of such reemployment and provided that a commission reinstatement fee and new application are submitted.

(B) - (F) (No change.)

(c) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502141
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATIONS

22 TAC §371.2, §371.17

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §371.2, concerning Applicant for License and new §371.17, concerning Residency Program Responsibilities. The amendments are being proposed to reflect the new timeframe and fee for the inclusion of FBI checks on applicants. The new rule is being proposed to give some guidance to the residency directors about the requirements for their residents.

Jim Zukowski, Ed.D., Executive Director has determined that for each year of the first five years the sections are in effect the fiscal implications will be an additional $39 for each applicant wishing to obtain a podiatry license in the state of Texas. There will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Zukowski has also determined that for each year for the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater assurance that the applicant has no prior convictions. There will be no effect on small or micro-businesses.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendment and new rule are proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendment and new rule implements Texas Occupations Code, §202.153 and §202.259.

§371.2. Applicant for License.

(a) - (c) (No change.)

(d) The completed application and required supporting materials must be received by the Board staff no later than 60 [~~30~~] days before the first day of the examination. The materials supporting the application, such as transcripts of candidates, shall be received by the Board before the examination.

(e) (No change.)

(f) The full examination fee is $289 [~~$250~~]. Only a certified check, Postal Service Money Order or Express Money Order shall be accepted. No examination fee will be refunded. The examination fee must be received by the Board at least 15 days before the date the applicant is scheduled to begin the examination.

(g) - (j) (No change.)

§371.17. Residency Program Responsibilities.

(a) All residency programs requesting temporary licenses for the podiatric physicians participating in the program must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation.

(b) The residency director will be held responsible for the entire program including but not limited to:

(1) ensuring that the temporary licensee is practicing within the scope of the residency program requirements.

(2) the temporary licensee has read and understood the Act and Rules governing the practice of podiatric medicine.

(3) Ensuring that all residency program attendees are properly licensed with the Board prior to participation in the program.

(c) Within thirty (30) days of the start date of the program each year, the residency director must report to the Board a list of all residents enrolled in the program, the names of all of the directors in the program and which program each individual is enrolled in.

(d) The Board may inspect a facility or facilities housing a residency program to ensure compliance with the law and public safety.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502116
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 305-7002

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CHAPTER 375. RULES GOVERNING CONDUCT

22 TAC §375.16

The Texas State Board of Podiatric Medical Examiners proposes new §375.16, concerning General Authority of Podiatrist to Delegate. The new rule is being proposed to establish rules for a podiatric physician to delegate duties.

Jim Zukowski, Ed.D., Executive Director has determined that for each year of the first five years the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Dr. Zukowski has also determined that for each year for the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be competent podiatric card. There will be no effect on small or micro-businesses. There are no economic costs to persons who are required to comply with the rule as proposed.

Comments on or about the proposal may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The new rule is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed new rule implements Texas Occupations Code, §202.151.

§375.16. General Authority of Podiatrist to Delegate.

(a) A podiatrist licensed under Chapter 371 may delegate to a qualified and properly trained person acting under the podiatrist's appropriate supervision any medical act that a reasonable and prudent podiatrist would find within the scope of sound medical judgment to delegate if:

(1) the act:

(A) can be properly and safely performed by the person to whom the medical act is delegated;

(B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice podiatric medicine.

(b) The delegating podiatrist remains responsible for the medical acts of the person performing the delegated medical acts.

(c) The Texas State Board of Podiatric Medical Examiners may determine whether:

(1) an act constitutes the practice of podiatric medicine.

(2) a medical act may be properly or safely delegated by podiatrists.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502117
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 305-7002

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 17. HEARING PROCEDURES FOR ADMINISTRATIVE PENALTIES AND REMOVAL OF UNAUTHORIZED OR DANGEROUS STRUCTURES ON STATE LAND

31 TAC §§17.1 - 17.3, 17.7, 17.39, 17.41, 17.46 - 17.48, 17.50

The Texas General Land Office (GLO) proposes amendments to §§17.1 - 17.3, 17.7, 17.39, 17.41, 17.46 - 17.48, and 17.50, relating to Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangers Structures on State Land. These rule amendments have been undertaken as a result of the comprehensive review of the GLO's rules mandated by Texas Government Code §2001.039. The amendments are non-substantive updates and will ensure that the rules are current, clear,

and necessary. The proposed amendments to Chapter 17 update references to legal citations, update definitions and update the mailing address of the GLO Legal Division that changed since the last time this chapter was reviewed.

The GLO proposes the amendment to §17.1 relating to Purpose and Scope. Currently, §17.1(c) refers to the Administrative Procedure Act (APA) as Texas Civil Statutes, Article 6252-13a (Supp. 1991). The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation in §17.1(c) to Texas Government Code, §2001.001, et seq. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.2 relating to Definitions. The proposed amendment would update the title of the Deputy Commissioner to Deputy Commissioner of the Asset Management Division or Coastal Resources Division, as applicable.

The GLO proposes the amendment to §17.3 relating to Filing of Documents. The proposed amendment would update the mailing address for the Legal Services Division of the General Land Office, to 9th Floor, Austin, Texas 78701-1496.

The GLO proposes the amendment to §17.7 relating to Initiation of General Land Office Action. Currently, §17.7(3) references the Administrative Procedure Act. The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment in §17.7(3) would update the citation to Texas Government Code §2001.001, et seq. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.39 relating to Commissioner's Orders. Currently, §17.39(c) references Texas Civil Statutes, Article 6252-13(a), §16. The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation in §17.39(c) to Texas Government Code, §2001.141, et seq. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.41 relating to Compliance or Petition for Judicial Review. Currently, §17.41(b) references the Administrative Procedure and Texas Register Act, §19. The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation in §17.41(b) to Texas Government Code §2001.171, et seq. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.46 relating to Ex Parte Communications. Currently, §17.46 references the Administrative Procedure and Texas Register Act, §14(q). The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation to Texas Government Code, §2001.061. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.47 relating to Subpoenas. Currently, §17.47(a) references the Administrative Procedure and Texas Register Act, §14. The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation in §17.47(a) to Texas Government Code, §2001.089. The proposed citation amendments would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.48 relating to Depositions. Currently, §17.48 references the Administrative Procedure and Texas Register Act, §14 and §14a. The APA is codified in Texas Government Code §2001.001, et seq. The proposed amendment would update the citation to Texas Government Code, §2001.081, et seq. The proposed citation amendment would create consistency for these citations throughout Chapter 17.

The GLO proposes the amendment to §17.50 relating to Remedies Not Exclusive. The proposed amendment updates the citations and edits §17.50 to ensure the section is clear and readable. The reference to Texas Natural Resources Code, §51.302 "as amended" will now be deleted because the term "as amended" is unnecessary. The reference to "new" Texas Natural Resources Code §51.3021 will be deleted because §51.3021 is no longer a new statute.

Larry L. Laine, Chief Clerk of the GLO, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Laine has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendments will be updating references to legal citations, updating definitions and updating the GLO Legal Department mailing address. There will be no effect on small business. There are no economic costs to persons who are required to comply with the proposed amendments.

The GLO invites comments from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, Texas Register Liaison, Texas General Land Office, P. O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or email to walter.talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this notice.

The amendments are proposed under the Natural Resources Code, §31.051, which authorizes the commissioner to make and enforce rules consistent with the law.

Texas Natural Resources Code §51.302 and §51.3021 are not affected by the proposed amendments due to the fact that there are no substantive changes proposed. The proposed amendments update references to legal citations, changes the title of the deputy commissioner and updates the mailing address of the GLO Legal Division.

No other codes, articles or statutes are affected by these proposed amendments.

§17.1. Purpose and Scope.

(a) - (b) (No change.)

(c) These sections shall supplement the provisions of Texas Government Code, §2001.001, et seq. (APA) [~~Texas Civil Statutes, Article 6252-13a (Supp. 1991), hereinafter referred to as APTRA~~]. All practices and procedures provided for by APA [~~APTRA~~], even though not specifically included herein, shall be applicable to practice before the General Land Office.

§17.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Deputy commissioner--The deputy commissioner of the Asset Management Division or Coastal Resources [~~Resource Management~~] Division, as applicable, of the General Land Office.

(7) - (17) (No change.)

§17.3. Filing of Documents.

(a) All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, 9th Floor [~~Room 630~~], Austin, Texas 78701-1496 [~~1495~~].

(b) The administrative hearings clerk shall deliver a copy of all documents submitted under this section to the assigned agency hearings attorney at the following address: Legal Services Division: Environment Law Section, General Land Office, 1700 North Congress Avenue, 9th Floor [~~Room 630~~], Austin, Texas 78701-1496 [~~1495~~].

(c) - (e) (No change.)

§17.7. Initiation of General Land Office Action.

(a) The commissioner may recover a penalty of not less than $50 or more than $1,000 for each day that a person constructs, owns, operates, possesses, or exercises control over an unauthorized structure or facility on state land.

(1) - (2) (No change.)

(3) Prior to a final order of the commissioner assessing a penalty or ordering the removal of an unauthorized facility or structure, the owner or operator shall be entitled to a hearing. The hearing shall be conducted in accordance with the provisions of Texas Government Code, [~~Administrative Procedure Act, §~~] §2001.001 et seq.

(b) - (f) (No change.)

§17.39. Commissioner's Orders.

(a) - (b) (No change.)

(c) Not later than the 20th day after the date on which the notice is served in accordance with subsection (b) of this section, the owner or operator charged may consent in writing to the report, including the commissioner's recommendations, or the owner or operator charged or any party to the administrative hearing may file a motion for rehearing in accordance with Texas Government Code, §2001.141, et seq [~~Texas Civil Statutes, Article 6252-13(a), §16~~].

(d) - (f) (No change.)

§17.41. Compliance or Petition for Judicial Review.

(a) (No change.)

(b) Judicial review of the order or decision of the commissioner shall be under the Texas Government Code, §2001.171, et seq [~~Administrative Procedure and Texas Register Act, §19 (Texas Government Code, Chapter 2001)~~].

(c) - (d) (No change.)

§17.46. Ex Parte Communications.

Unless otherwise authorized by law, a hearing examiner in a contested case may not communicate, directly or indirectly, with any agency, person, party, or its representative regarding any issue of fact or law relating to such case, except on notice and opportunity for all parties to participate. Pursuant to the authority provided in the Texas Government Code, §2001.061 [~~Administrative Procedure and Texas Register Act, §14(q)~~], however, the commissioner, chief clerk, or an employee of the General Land Office who is assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the General Land Office who have not participated in any way in preparation for or as a participant or witness in such contested case in order to utilize the special skills of the agency and its staff in evaluating the evidence.

§17.47. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by the Texas Government Code, §2001.089 [~~Administrative Procedure and Texas Register Act, §14~~]. The General Land Office may issue subpoenas addressed to any sheriff or constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. A subpoena may be issued by the commissioner, the chief clerk, or during the course of a hearing, by a hearing examiner.

(b) (No change.)

(c) Subpoenas shall be issued only after a showing of good cause and after the deposit of sufficient funds to ensure payment of expenses incident to the issuance of such subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Texas Government Code, §2001.103 [~~Administrative Procedure and Texas Register Act, §14~~].

(d) - (e) (No change.)

§17.48. Depositions.

The taking and use of depositions in any proceeding shall be governed by the Texas Government Code, §2001.081, et seq [~~Administrative Procedure and Texas Register Act, §14 and §14a~~].

§17.50. Remedies Not Exclusive.

The remedies under Texas Natural Resources Code [~~amended~~] §51.302 and [~~new~~] §51.3021 [~~of the Texas Natural Resources Code~~] are cumulative and not exclusive. The Texas Natural Resources Code does not require exhaustion of administrative remedies as a condition precedent to any other remedy, nor does it prohibit any person from bringing an action at common law or under any other law consistent with Texas Natural Resources Code [~~amended~~] §51.302 and [~~new~~] §51.3021 [~~of the Texas Natural Resources Code~~]. No such action shall collaterally estop or bar the commissioner in any proceeding under this chapter or under the Texas Natural Resources Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502122
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 475-1859

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER D. TIME, PLACE, AND MANNER RESTRICTIONS ON LICENSE HOLDERS

37 TAC §§6.41 - 6.46

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Subchapter D, §§6.41 - 6.46, concerning Time, Place, and Manner Restrictions on License Holders.

The repeal of §6.41 is deemed necessary because Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder and the definition of "intoxicated" in Texas Penal Code, §49.01 prohibit carrying of a concealed handgun by a license holder while intoxicated. This rule is simply a restatement of the law under Penal Code, §46.035(d).

The repeal of §6.42 is deemed necessary because Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder requires a license holder to carry the handgun concealed unless a justification defense exists under Texas Penal Code, Chapter 9. This rule is simply a restatement of the law under Penal Code, §46.035(a), (h).

The repeal of §6.43 is deemed necessary because Texas Government Code, §411.187, Suspension of License and §411.205, Displaying License; Penalty, requires a license holder carrying a concealed handgun on or about their person to display the driver license and concealed handgun license on demand for identification from a peace officer or magistrate. This rule is simply a restatement of the law under Texas Government Code, §411.187(a)(2) and §411.205.

The repeal of §6.44 is deemed necessary because Texas Penal Code, §46.03, Places Weapons Prohibited, and Texas Penal Code, §46.035, Unlawful Carrying of Handgun by License Holder, prohibit the license holder from carrying a concealed handgun in certain locations and give the license holders notice that such violations are felony offenses. This rule is simply a restatement of the law under Texas Penal Code, §46.03 and §46.035.

The repeal of §6.45 is deemed necessary because the current rule separates out the Class A misdemeanor level offense of carrying a concealed handgun in certain places. The current rule does not provide additional information to license holders under Texas Government Code, §411.171 *et. seq*. Since the enactment of current §6.45, the law has not changed. The repeal of §6.45 will not deprive the public of information and will not affect the Texas Department of Public Safety's administration of the Concealed Handgun Licensing Statute. This rule is simply a restatement of the law under Texas Penal Code, §46.035.

The repeal of §6.46 is deemed necessary because Texas Parks and Wildlife Code, §62.081 gives license holders carrying concealed handguns notice that carrying a concealed handgun on Lower Colorado River Authority lands is a Class C misdemeanor, This rule is simply a restatement of the law under the Texas Parks and Wildlife Code, §62.081.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be decreased confusion among license holders following the repeals since they are a duplication of Texas Penal Code §46.03 and §46.035 and/or Texas Government Code, §411.187 and §411.205. There is no anticipated adverse economic impact on individuals, small businesses, or micro-businesses.

Comments on the repeals may be submitted to Jean O'Shaw, Regulatory License Service-Legal Staff, Texas Department of Public Safety, P.O. 4143, MSC-0246, Austin, Texas 78765-0246, (512) 424-5831.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which requires the Director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for control of the department; and Texas Government Code, §411.197, which authorizes the department to adopt rules to administer this chapter.

The repeals affect Texas Government Code, §§411.004(3), 411.006(4) and 411.197.

§6.41. Carry While Intoxicated.

§6.42. Failure To Conceal Handgun.

§6.43. Failure To Display License on Demand.

§6.44. Places Prohibited: Felony Violations.

§6.45. Places Prohibited: Class A Misdemeanor Violations.

§6.46. Places Prohibited: Class C Misdemeanor Violation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502076
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 424-2135

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PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.60

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Juvenile Probation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Juvenile Probation Commission proposes the repeal of §341.60 relating to electronic data interchange specifications. The repeal is in an effort not to overlap with new proposed revisions to §341.60, which provide structural and substantive changes and clarify existing specifications.

Lisa Capers, Deputy Executive Director, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state government or small businesses as a result of enforcement or implementation. There will be a fiscal impact on local governments that currently do not run the CASEWORKER system. The impact will be as a result of reprogramming current data systems to report according to the requirements of the electronic data interchange. The total fiscal impact to non-CASEWORKER juvenile probation departments is unknown because each county will reconfigure their data systems differently. The Texas Juvenile Probation Commission has contact each non-CASEWORKER juvenile probation department and none state they would be financially unable to make the necessary changes if the repeal and new amendments were adopted.

Ms. Capers has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal will be better, more complete and consistent juvenile justice data which can be used to analyze the juvenile justice system. There will be no impact on small business or individuals as a result of the repeal.

Public comments on the repeal may be submitted to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.60. TJPC Monthly Folder Extract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502131
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 424-6710

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37 TAC §341.60

The Texas Juvenile Probation Commission proposes new §341.60 relating to electronic data interchange specifications. The proposed standards provide structural and substantive changes and clarify existing specifications.

Lisa Capers, Deputy Executive Director, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state government or small businesses as a result of enforcement or implementation. There will be a fiscal impact on local governments that currently do not run the CASEWORKER system. The impact will be as a result of reprogramming current data systems to report according to the requirements of the electronic data interchange. The total fiscal impact to non-CASEWORKER juvenile probation departments is unknown because each county will reconfigure their data systems differently. The Texas Juvenile Probation Commission has contact each non-CASEWORKER juvenile probation department and none state they would be financially unable to make the necessary changes if the repeal and new rule were adopted.

Ms. Capers has also determined that for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcement will be better, more complete and consistent juvenile justice data which can be used to analyze the juvenile justice system. There will be no impact on small business or individuals as a result of the proposed rule.

Public comments on the proposed new section may be submitted to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.60. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.
Figure 1: 37 TAC §341.60
Figure 2: 37 TAC §341.60

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2005.

TRD-200502132
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: July 10, 2005
For further information, please call: (512) 424-6710

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.1

The Commission on State Emergency Communications withdraws the proposed amendment to §255.1, which appeared in the February 4, 2005, issue of the *Texas Register* (30 TexReg 452).

Filed with the Office of the Secretary of State on May 31, 2005.

TRD-200502178
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: May 31, 2005
For further information, please call: (512) 305-6933

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 593. LICENSES

22 TAC §593.1

The Texas Structural Pest Control Board adopts an amendment to §593.1, concerning Persons Required to Secure License, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2350).

Justification for the rule is that the proposal will codify statute language and clarify the requirements for each license category.

The rule will function in reflecting the correct statutory language. The rule change also adds clarity by defining each certified applicator type. The rule also explains the license status of a technician who has just started as an apprentice.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502089
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.3

The Texas Structural Pest Control Board adopts an amendment to §593.3, concerning Insurance Requirement, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2351).

Justification for the rule is that the changes will provide clarification to insurance requirements for inactive licensees.

The rule will function in reflecting the current Board practice of establishing proof of insurance. Other language changes were for clarity.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502090
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.4

The Texas Structural Pest Control Board adopts an amendment to §593.4, concerning Resident Agent, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2352).

Justification for the rule is that the change will update the rule and expressly includes all license categories.

The rule will function in making it clear that if a resident agent is not designated, then the Texas Secretary of State will automatically be designated.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502091

Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.5

The Texas Structural Pest Control Board adopts an amendment to §593.5, concerning Examinations, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2352).

Justification for the rule is that the proposal will improve readability and promote uniformity.

The rule will function on several levels. First, out-of-state experience is clarified. The proposal also now incorporates computer based testing. The regulation received additional clarification on what is a pest and the changes also clarify some treatment methods. Also, the educational requirements were clarified when an applicant possesses a degree. Finally, the order was changed on some rules to provide clarity to a reader of the regulations.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502092
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.6

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.6 concerning License Expiration and Renewal without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2355).

Justification for the rule is that the proposal will improve readability and promote uniformity.

The rule will function on several levels. The changes will provide clarification. The requirement will also incorporate the statutory requirements of Occ. Code §1951.302. Lastly, the two year requirement on certified non-commercial applicators is changed to one year. This change will bring the Board's licensing requirements closer to the Board's actual requirements for licensing commercial applicators.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502093
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.7

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.7 concerning Fees without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2356).

Justification for the rule is that the proposal provides clarity as to how long a license is valid.

The rule will function by providing clarification as to the length of time a license will run.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502094
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.11

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.11, concerning Certified Noncommercial Applicator Restrictions, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2356).

Justification for the rule is that the proposal provides grammatical changes.

The rule will function by providing for grammatical changes.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502095
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.21

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.21, concerning Technician License Requirements, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2357).

Justification for the rule is that the proposal improves readability and promote uniformity.

The rule will function by making clear some of calendar time lines for getting a technician's license. The changes will also add some additional requirements for submitting a correct application. Other changes are grammatical in nature or the changes were made to reflect the change in the statutory name. Another change was made on the renewal date. This change clearly spells out that the birthdate is the demarcation line for making a determination on renewals.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502096
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.23

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.23, concerning Continuing Education Requirements for Certified Applicators, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2359).

Justification for the rule is that the proposal improves readability and promote uniformity.

The rule will function by changing references from gender to licensee to reflect the use of the correct language. The change on time is made to reflect that individuals will change employers. The other changes reflect the conditions for hardship as listed in 22 TAC §593.8. The deletion of the reference to the Board reflects the actual practice that the Executive Director decides hardship requests. Lastly, the change on records is made to be consistent with the proposed change to 22 TAC §593.21(j).

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502097
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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22 TAC §593.24

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.24, concerning Criteria and Evaluation of Continuing Education, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2360).

Justification for the rule is that the proposal improves readability and promote uniformity. The change also expands on the penalties for individuals who do not follow Board requirements for continuing education providers.

The rule will function by deleting unnecessary grammer like recency. The addition of physical address will be an aid to investigators in monitoring presentations. The last change will be for those CEU providers who are not deterred by monetary penalties.

No comments were received.

No group or association made comments for or against the rule.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Occupations Code, which provides the

Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502098
Dale Burnett
Executive Director
Texas Structural Pest Control Board
Effective date: June 13, 2005
Proposal publication date: April 22, 2005
For further information, please call: (512) 305-8270

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1

The Texas Commission on Environmental Quality (commission) adopts an amendment to §101.1 *without change* to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1009), and will not be republished.

The amendment will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

After adoption of the Federal Clean Air Act (FCAA) Amendments of 1990, the EPA classified the designated four areas of Texas that failed to meet the one-hour national ambient air quality standard (NAAQS) for the air contaminant ozone. Each area was classified by the EPA based on the amount by which it exceeded the ozone NAAQS of 0.12 parts per million (ppm) based on a peak one-hour concentration of ozone. Eight counties in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller) were classified as Severe and El Paso County was classified as Serious. Four counties in the Dallas-Fort Worth (DFW) area (Collin, Dallas, Denton, and Tarrant) were originally classified as Moderate and then reclassified to Serious. Three counties in the Beaumont-Port Arthur (BPA) area (Hardin, Jefferson, and Orange) were originally classified as Serious, then reclassified to Moderate, and reclassified again, in 2004, to Serious.

Effective June 15, 2004, EPA designated and classified four areas in Texas as nonattainment for the eight-hour ozone standard (69 FR 23858). The HGB area was classified as Moderate and contains the same eight counties that were classified as Severe under the one- hour standard: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The DFW area was also classified as Moderate and consists of the counties classified as Serious under the one-hour standard: Dallas, Tarrant, Denton, and Collin Counties, plus five additional counties: Ellis, Johnson, Kaufman, Parker, and Rockwall. The BPA area was classified as Marginal and consists of the three counties classified as Serious under the one- hour standard: Hardin, Jefferson, and Orange. The El Paso area consisting of El Paso County is now designated as attainment. In addition, the San Antonio area, consisting of Bexar, Comal, and Guadalupe Counties, was also designated as nonattainment under the FCAA, Title I, Part D, Subpart 1 (42 United States Code (USC), §7402), but with a deferred effective date of September 30, 2005, due to its status as an early action compact (EAC) area. EPA noted in the eight-hour ozone designation and classification rulemaking that EAC areas will continue to remain eligible for deferred effective dates as long as they remain in compliance with their compact agreements. The classification of nonattainment areas was codified in 40 Code of Federal Regulations (CFR), and this amendment will update the commission rules to match the new federal classifications.

On November 29, 2004, EPA added five volatile organic compounds (VOC) to the list of compounds in 40 CFR §51.100(s) that, for lack of reactivity, are excluded from the definition of VOC. The definition of VOC is based on compound reactivity and the compound's tendency to produce ozone. The compounds include 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (known as HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (known as HFE-7500, HFE-s702, T-7145, and L-15381); 1,1,1,2,3,3,3-heptafluoropropane (known as HFC 227ea); methyl formate; and t-butyl acetate (also known as tertiary butyl acetate, TBAC, or TBAc). EPA revised the definition of VOC to say that TBAC will not be a VOC for purposes of VOC emissions limitations or VOC content requirement, but will continue to be a VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements that apply to a VOC. The commission is deleting the list of compounds from the commission definition and referring to the federal definition in 40 CFR §51.100, as amended on November 29, 2004 (69 FR 69290 - 69304).

Adopted changes to the 30 TAC Chapter 116 corresponding rulemaking are also published in this issue of the *Texas Register*.

SECTION DISCUSSION

§101.1, Definitions

The commission amends the definition of nonattainment area in paragraph (67) to reflect the classifications under the existing one-hour standard and to add the classifications under the new eight-hour ozone standard. The classifications under the new standard are the Moderate classification for the HGB and DFW areas, including five additional counties, and the Marginal classification for the BPA area. The San Antonio area is designated as nonattainment under the FCAA, Title I, Part D, Subpart 1 (42 USC, §7402), but with a deferred effective date of September 30, 2005, due to its status as an EAC area. The El Paso area is in attainment for the eight-hour ozone standard and therefore is not listed under new subparagraph (F). Previously existing subparagraph (F) is relettered as subparagraph (G).

The commission also amends the definition of VOC in paragraph (111) by deleting the existing list of compounds and by referring to the federal definition in 40 CFR §51.100(s), except paragraphs (2) - (4), as amended on November 29, 2004 (69 FR 69290 - 69304). The federal definition includes a special case for the compound t-butyl acetate, which will not be considered a VOC for emission limitation or content purposes but will be considered a

VOC for emissions reporting and inventories and photochemical modeling.

The commission also made administrative changes for readability, conformity with the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004, and consistency with other commission rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment revises the definition of nonattainment area to reflect the new classifications under the eight-hour standard for the BPA, DFW, and HGB areas; adds the five newly designated counties in the DFW area; and adds the San Antonio area. The amendment also incorporates a change to the federal definition for VOC, which became effective November 29, 2004. The amendment will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The amendment does not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the amendment does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted amendment. The specific purpose of this rulemaking is to amend the definition of nonattainment area to reflect the new classifications for the BPA, DFW, and HGB areas; add the five newly designated counties in the DFW area; and add the San Antonio area. The EPA has indicated that the one- hour standard will be revoked on June 15, 2005. The amendment also incorporates a change to the federal definition for VOC, which became effective November 29, 2004. Promulgation and enforcement of the amendment would be neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the amendment does not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants are authorized and the adopted revisions maintain the same level of emissions control as the previously existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Section 101.1 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be required to certify compliance with amended §101.1.

PUBLIC COMMENT

The commission conducted a public hearing on this proposal in Austin on March 17, 2005. Two comments were received during the public comment period, which closed on March 28, 2005. PVI Industries, LLC supported the removal of tertiary butyl acetate from the list of reactive VOCs.

Texas Chemical Council (TCC) also supported the removal of the compounds from the list of regulated VOCs. TCC also commented that the reportable quantity (RQ) for hydrochloroflourocarbons (HCFC) should be set to 5,000 pounds, which is the federal RQ under FCAA, §602, for dichlorodiflouromethane and trichloromonoflouromethane.

The suggested change to the RQ was not proposed or noticed for public comment and the commission has not made an evaluation of the request. No change has been made in response to TCC's comment requesting a change in the RQ for HCFC.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; and §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under Texas Health and Safety Code, Chapter 382.

The adopted amendment implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502133
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: June 15, 2005
Proposal publication date: February 25, 2005
For further information, please call: (512) 239-0348

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CHAPTER 113. STANDARDS OF PERFORMANCE FOR HAZARDOUS AIR POLLUTANTS AND FOR DESIGNATED FACILITIES AND POLLUTANTS

SUBCHAPTER C. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (FCAA, §112, 40 CFR PART 63)

30 TAC §§113.100, 113.105, 113.106, 113.110, 113.120, 113.130, 113.140, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.360, 113.380, 113.390, 113.400, 113.410, 113.420, 113.430, 113.440, 113.460, 113.470, 113.480, 113.490, 113.530, 113.600, 113.610, 113.620, 113.640, 113.650, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.770, 113.790, 113.810, 113.880, 113.890, 113.920, 113.940, 113.960, 113.980, 113.990, 113.1000, 113.1010, 113.1060, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1270, 113.1280, 113.1290

The Texas Commission on Environmental Quality (commission) adopts the amendments to §§113.100, 113.110, 113.120, 113.130, 113.140, 113.170, 113.180, 113.190, 113.200, 113.220, 113.230, 113.240, 113.250, 113.260, 113.280, 113.290, 113.300, 113.320, 113.330, 113.340, 113.350, 113.360, 113.380, 113.390, 113.400, 113.410, 113.420, 113.430, 113.440, 113.460, 113.470, 113.480, 113.490, 113.530, 113.600, 113.610, 113.620, 113.640, 113.650, 113.660, 113.670, 113.690, 113.700, 113.710, 113.720, 113.730, 113.750, 113.770, 113.790, and 113.810, and adopts new §§113.105, 113.106, 113.880, 113.890, 113.920, 113.940, 113.960, 113.980, 113.990, 113.1000, 113.1010, 113.1060, 113.1080, 113.1090, 113.1100, 113.1110, 113.1120, 113.1140, 113.1150, 113.1160, 113.1170, 113.1180, 113.1190, 113.1200, 113.1210, 113.1220, 113.1230, 113.1250, 113.1270, 113.1280, and 113.1290 *without changes* to the proposed text as published in the December 31, 2004, issue of the *Texas Register* (29 TexReg 12080), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The amendments to Chapter 113 incorporate amendments that the United States Environmental Protection Agency (EPA) has made to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, under 40 Code of Federal Regulations (CFR) Part 63. These are technology-based standards commonly referred to as the maximum achievable control technology (MACT) standards. In addition, the new sections incorporate by reference 29 MACT standards and two general MACT requirements that have not been previously incorporated into Chapter 113. The EPA is developing these national standards to regulate emissions of hazardous air pollutants under the Federal Clean Air Act (FCAA), §112, as codified in 42 United States Code (USC), §7412.

Under federal law, affected industries are required to implement the MACT standards regardless of whether the commission or the EPA is the agency responsible for implementation. As MACT standards are promulgated or amended by the EPA, they are reviewed for compatibility with current commission regulations and policies. The commission then incorporates them into Chapter 113 through formal rulemaking procedures. After each MACT standard or amendment is adopted, the commission will seek formal delegation from the EPA under 40 CFR Part 63, Subpart E, which implements 42 USC, §7412(1). Upon delegation, the commission will be responsible for administering and enforcing the MACT requirements.

The commission incorporates amendments that the EPA has made to the 40 CFR Part 63 General Provisions and 49 of the federal MACT standards previously incorporated into the commission rules by updating the federal promulgation dates and Federal Register (FR) citations stated in the commission rules. The standards, along with their corresponding Chapter 113 sections and original incorporation date, are listed in the following table.

Figure 1: 30 TAC Chapter 113 - Preamble

The commission also incorporates by reference, without change, 29 recent federal MACT standards not currently included in Chapter 113. In addition, the commission incorporates by reference, without change, general provisions related to FCAA, §112(j), as implemented by the EPA under 40 CFR §§63.50 -

63.56 (concerning Applicability, Definitions, Approval Process for New and Existing Emission Units, Application Content for Case-by-Case MACT Determinations, Preconstruction Review Procedures for New Emission Units, MACT Determinations for Emission Units Subject to Case-by-Case Determination of Equivalent Emission Limitations, and Requirements for Case-by-Case Determination of Equivalent Emission Limitations after Promulgation of a Subsequent MACT Standard). The commission also incorporates by reference, without change, 40 CFR Part 63 Subpart C, concerning the List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List. These additions are summarized in the following table.

Figure 2: 30 TAC Chapter 113 - Preamble

SECTION BY SECTION DISCUSSION

Subchapter C: National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 Code of Federal Regulations Part 63)

Throughout the new and amended sections, where needed, the commission adds "Part" to the titles of each section to conform to Texas Register guidelines. Additionally, throughout the amendments, the commission is adding the word "Part" after the phrase "Code of Federal Regulations." Similarly, where the acronym "CFR" is used in existing sections, it is expanded to the Code of Federal Regulations. These amendments are made so that the rule language will conform to commission and Texas Register formatting and style standards.

Section 113.100 - General Provisions (40 Code of Federal Regulations Part 63, Subpart A)

The commission amends §113.100 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart A made by the EPA since April 12, 1999. During this time frame, EPA amended 40 CFR Part 63 Subpart A on June 10, 1999 (64 FR 31375), October 17, 2000 (65 FR 62215), March 12, 2001 (66 FR 14324), June 8, 2001 (66 FR 30822), July 3, 2001 (66 FR 35087), October 2, 2001 (66 FR 50124), January 29, 2002 (67 FR 4184), February 14, 2002 (67 FR 6986), February 27, 2002 (67 FR 9162), April 5, 2002 (67 FR 16595), June 10, 2002 (67 FR 39812), July 23, 2002 (67 FR 48262), December 4, 2002 (67 FR 72341), February 18, 2003 (68 FR 7713), April 21, 2003 (68 FR 19402), May 6, 2003 (68 FR 23898), May 20, 2003 (68 FR 27663), May 23, 2003 (68 FR 28619), May 27, 2003 (68 FR 28784), May 28, 2003 (68 FR 31615 and 31760), May 29, 2003 (68 FR 32189), May 30, 2003 (68 FR 32600), June 17, 2003 (68 FR 35792), November 13, 2003 (68 FR 64446), December 19, 2003 (68 FR 70965), January 2, 2004 (69 FR 157), February 3, 2004 (69 FR 5063), April 19, 2004 (69 FR 20990), April 22, 2004 (69 FR 21752), April 26, 2004 (69 FR 22623), and June 15, 2004 (69 FR 33506).

The June 10, 1999, amendments revised 40 CFR §63.14 by incorporating by reference several test methods associated with 40 CFR Part 63, Subparts AA and BB (MACTs for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production, respectively).

The October 17, 2000, amendments included numerous editorial and technical changes to testing and monitoring provisions, as well as changes in the format of test methods and performance specifications. These amendments corrected typographical errors, corrected technical errors, updated test methods to more current versions, and removed or revised obsolete narrative material. The affected sections included 40 CFR §63.7, Performance Testing Requirements, §63.11, Control Device Requirements, and §63.14, Incorporations by Reference, as well as various individual test methods in 40 CFR Part 63, Appendix A.

The March 12, 2001, amendments granted Puget Sound Clean Air authority to implement and enforce its perchloroethylene dry cleaning regulation in place of the federal dry cleaning MACT, for area sources in Puget Sound Clean Air's jurisdiction. This action revised 40 CFR §63.14 by incorporating the Puget Sound regulations under 40 CFR §63.14(d)(2).

The June 8, 2001, amendments granted the Delaware Department of Natural Resources and Environmental Control authority to implement and enforce its accidental release prevention regulation in place of similar federal requirements. This action revised 40 CFR §63.14 by incorporating the Delaware regulations under 40 CFR §63.14(d)(3).

The July 3, 2001, amendments granted the New Jersey Department of Environmental Protection the authority to implement and enforce portions of the State of New Jersey's Toxic Catastrophe Prevention Act Program in place of the Federal Chemical Accident Prevention regulations, promulgated by the EPA under FCAA, §112(r), for all stationary sources with covered processes (''subject sources'') under New Jersey's jurisdiction. This action revised 40 CFR §63.14 by incorporating the New Jersey Toxic Catastrophe Prevention Act Program under 40 CFR §63.14(d)(2).

The October 2, 2001, amendments approved certain Delaware Department of Natural Resources and Environmental Control regulations as equivalent to FCAA, §112(d) requirements as set forth in 40 CFR Part 63, Subparts A, M, N, and Q, respectively, for affected sources in the State of Delaware. This action revised 40 CFR §63.14 and §63.99, Delegated Federal Authorities, to reflect the incorporation and federal enforceability of Delaware Department of Natural Resources and Environmental Control's regulations under 40 CFR §63.14(d)(3).

The January 29, 2002, amendments revised 40 CFR §63.13, Addresses of State Air Pollution Control Agencies and EPA Regional Offices, by correcting the address listed for EPA Region III.

The February 14, 2002, amendments revised 40 CFR §63.14 by incorporating by reference American Society of Mechanical Engineers (ASME) standard numbers QHO 1 1994 and QHO 1a 1996 Addenda. This ASME standard is titled ''Standard for the Qualification and Certification of Hazardous Waste Incinerator Operators,'' and was added as 40 CFR §63.14(i) in conjunction with revisions to 40 CFR Part 63, Subpart EEE (MACT for Hazardous Waste Combustors).

The February 27, 2002, amendments revised 40 CFR §63.14 by adding and reserving §63.14(b)(19) and (20), and incorporating by reference American Society for Testing and Materials (ASTM) method D2099-00 under 40 CFR §63.14(b)(21). This test method was incorporated in conjunction with the addition of 40 CFR Part 63, Subpart TTTT (MACT for Leather Finishing Operations).

The April 5, 2002, amendments to 40 CFR Part 63, Subpart A contained numerous clarifications and changes as a result of settlement negotiations with six petitioners, and various public comments. Amendments to 40 CFR §63.5, Construction and Reconstruction, streamlined preconstruction review requirements,

including a provision to allow state or local agencies to use preconstruction review procedures used for other purposes to satisfy the federal preconstruction review requirements in 40 CFR Part 63, Subpart A. The amendments to 40 CFR §63.6, Compliance with Standards and Maintenance Requirements, added a notification requirement applicable to revisions of startup, shutdown, and malfunction plans, and added more comprehensive reporting requirements associated with malfunction events. The amendments also added language to clarify that startup, shutdown, and malfunction plans are not by themselves part of a facility's operating permit, such that startup, shutdown, and malfunction plans can be revised without revising the operating permit. The amendments to 40 CFR §63.6 also revised compliance extension provisions, allowing affected sources greater flexibility to request compliance extensions. The amendments to 40 CFR §63.8, Monitoring Requirements, clarified the owner or operator's obligations with respect to the accessibility of readouts from monitoring systems required for compliance, to ensure that this information is readily accessible to inspectors. The amendments also revised and created numerous definitions under 40 CFR §63.2, Definitions, including revisions to the definition of "affected source" and a definition of "new affected source."

The June 10, 2002, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart SSSS (MACT for Surface Coating of Metal Coil).

The July 23, 2002, amendments revised 40 CFR §63.14 by revising and adding test methods to support 40 CFR Part 63, Subpart NNNN (MACT for Surface Coating of Large Appliances).

The December 4, 2002, amendments revised 40 CFR §63.14 by incorporating a test method to support 40 CFR Part 63, Subpart JJJJ (MACT for Paper and Other Web Coating).

The February 18, 2003, amendments revised 40 CFR §63.14 by revising and updating test methods related to 40 CFR Part 63, Subpart MM (MACT for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills).

The April 21, 2003, amendments revised 40 CFR §63.14 by incorporating a test method (ASTM D6420-99) to support 40 CFR Part 63, Subpart WWWW (MACT for Reinforced Plastic Composites Production).

The May 6, 2003, amendments revised 40 CFR §63.8 by making an administrative correction to §63.8(f).

The May 20, 2003, amendments revised 40 CFR §63.14 by incorporating a test method associated with 40 CFR Part 63, Subpart FFFFF (MACT for Integrated Iron and Steel Manufacturing).

The May 23, 2003, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart RRRR (MACT for Surface Coating of Metal Furniture).

The May 27, 2003, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart PPPPP (MACT for Engine Test Cells/Stands).

The May 28, 2003, amendments (68 FR 31615) granted the New Hampshire Department of Environmental Services the authority to implement New Hampshire Department of Environmental Services' ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981'' rule in lieu of some sections of the federal asbestos MACT rule. This action revised 40 CFR §63.14 by incorporating the New Hampshire rules under §63.14(d)(5).

The May 28, 2003, amendments (68 FR 31760) revised 40 CFR §63.14 by incorporating test methods associated with 40 CFR Part 63, Subpart QQQQ (MACT for Surface Coating of Wood Building Products).

The May 29, 2003, amendments revised 40 CFR §63.14 by incorporating a test method to support 40 CFR Part 63, Subpart OOOO (MACT for Printing, Coating, and Dyeing of Fabrics and Other Textiles).

The May 30, 2003, amendments revised 40 CFR §63.6 requirements associated with minimization of emissions and startup, shutdown, and malfunction plans, and clarified that startup, shutdown, and malfunction plans must be submitted to the EPA or the permitting authority upon request. The May 30, 2003, amendments also provided for public access to startup, shutdown, and malfunction plans, to be implemented through the permitting authority or by direct on-site inspection of the plan. The amendments also streamlined reporting requirements associated with startup, shutdown, and malfunction events, and added rule language to ensure that deficient startup, shutdown, and malfunction plans are revised to address the specified deficiencies. The amendments also revised the 40 CFR §63.2 definition of "malfunction" to only include events that may cause emission limitations to be exceeded, and expanded the definition of "monitoring" to include data or information collected for purposes of verifying compliance with work practice standards.

The June 17, 2003, amendments revised 40 CFR §63.13 by correcting the address listed for EPA Region VII.

The November 13, 2003, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart KKKK (MACT for Surface Coating of Metal Cans).

The December 19, 2003, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart R (MACT for Gasoline Distribution Facilities).

The January 2, 2004, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart MMMM (MACT for Surface Coating of Miscellaneous Metal Parts and Products).

The February 3, 2004, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart EEEE (MACT for Organic Liquids Distribution (Non- Gasoline)).

The April 19, 2004, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart PPPP (MACT for Surface Coating of Plastic Parts and Products).

The April 22, 2004, amendments implemented a federal Performance Track program, which allows eligible sources to qualify for a reduction in the frequency of reporting.

The April 26, 2004, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart IIII (MACT for Surface Coating of Automobiles and Light-Duty Trucks).

The June 15, 2004, amendments revised 40 CFR §63.14 by incorporating test methods to support 40 CFR Part 63, Subpart ZZZZ (MACT for Stationary Reciprocating Internal Combustion Engines).

Section 113.105 - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act, §112(j) (40 Code of Federal Regulations Part 63, Subpart B, §§63.50 - 63.56)

The commission adopts new §113.105, which will incorporate by reference, without change, the final promulgated rules and all amendments to 40 CFR §§63.50 - 63.56 adopted by the EPA since May 20, 1994. Adopted §113.105 implements the requirements of FCAA, §112(j), by ensuring control of hazardous air pollutant emissions if the EPA should miss a scheduled MACT promulgation date. FCAA, §112(j) is commonly referred to as the "MACT hammer." If the EPA fails to promulgate an emission standard by the applicable FCAA, §112(j) deadline, major sources in that source category must submit to their respective state (or local) agencies a permit application to obtain source-specific case-by-case MACT. Conditions of the case- by-case MACT determination must be incorporated into the Title V operating permit.

Section 113.106 - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List (40 Code of Federal Regulations Part 63, Subpart C)

The commission adopts new §113.106, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart C adopted by the EPA on June 18, 1996 (61 FR 30823), as amended on August 2, 2000 (65 FR 47348) and November 29, 2004 (69 FR 69325). Incorporation of 40 CFR Part 63, Subpart C into Chapter 113 is necessary because Subpart C is the mechanism by which the list of hazardous air pollutants is updated. The June 18, 1996, amendments deleted caprolactam from the list of hazardous air pollutants and reserved 40 CFR §§63.61 - 63.69 for future use. The August 2, 2000, amendments altered the definition of glycol ether compounds referenced in the list of hazardous air pollutants. The November 29, 2004, amendments deleted ethylene glycol monobutyl ether from the list of hazardous air pollutants.

Section 113.110 - Synthetic Organic Chemical Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart F)

The commission amends §113.110 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart F made by the EPA since January 22, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart F on June 23, 2003 (68 FR 37344). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.120 - Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 Code of Federal Regulations Part 63, Subpart G)

The commission amends §113.120 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart G made by the EPA since January 22, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart G on June 23, 2003 (68 FR 37344). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.130 - Organic Hazardous Air Pollutants for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart H)

The commission amends §113.130 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart H made by the EPA since January 22, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart H on June 23, 2003 (68 FR 37345). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also slightly rephrased some sections to more clearly separate delegable requirements from non-delegable requirements.

Section 113.140 - Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 Code of Federal Regulations Part 63, Subpart I)

The commission amends §113.140 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart I made by the EPA since January 17, 1997. During this time frame, the EPA amended 40 CFR Part 63, Subpart I on June 23, 2003 (68 FR 37345). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.170 - Coke Oven Batteries (40 Code of Federal Regulations Part 63, Subpart L)

The commission amends §113.170 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart L made by the EPA since October 17, 2000. During this time frame, the EPA amended 40 CFR Part 63, Subpart L on June 23, 2003 (68 FR 37345). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.180 - Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M)

The commission amends §113.180 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart M made by the EPA since December 14, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart M on June 23, 2003 (68 FR 37347). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.190 - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 Code of Federal Regulations Part 63, Subpart N)

The commission amends §113.190 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart N made by the EPA since December 14, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart N on June 23, 2003 (68 FR 37347) and on July 19, 2004 (69 FR 42894). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions. The July 19, 2004, amendments addressed five technical areas: 1) the use of fume suppressants for controlling chromium emissions from hard chromium electroplating tanks;

2) a revised surface tension limit for decorative chromium electroplating tanks when measuring surface tension with a tensiometer; 3) an alternate emission limit for hard chromium electroplating tanks equipped with enclosing hoods; 4) revised definitions for chromium electroplating and chromium anodizing tanks; and 5) the pressure drop monitoring requirement for composite mesh pad control systems. The July 19, 2004, amendments affected the emission limits, definitions, compliance provisions, and performance testing requirements of this MACT standard.

Section 113.200 - Ethylene Oxide Emissions Standards for Sterilization Facilities (40 Code of Federal Regulations Part 63, Subpart O)

The commission amends §113.200 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart O made by the EPA since November 2, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart O on June 23, 2003 (68 FR 37348). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.220 - Industrial Process Cooling Towers (40 Code of Federal Regulations Part 63, Subpart Q)

The commission amends §113.220 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart Q made by the EPA since July 23, 1998. During this time frame, the EPA amended 40 CFR Part 63, Subpart Q on June 23, 2003 (68 FR 37348). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.230 - Gasoline Distribution Facilities (40 Code of Federal Regulations Part 63, Subpart R)

The commission amends §113.230 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart R made by the EPA since January 16, 1998. During this time frame, the EPA amended 40 CFR Part 63, Subpart R on June 23, 2003 (68 FR 37348) and December 19, 2003 (68 FR 70965). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The December 19, 2003, amendments clarified testing, monitoring, and recordkeeping requirements, and added additional flexibility to testing and recordkeeping requirements.

Section 113.240 - Pulp and Paper Industry (40 Code of Federal Regulations Part 63, Subpart S)

The commission amends §113.240 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart S made by the EPA since May 14, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart S on June 27, 2001 (66 FR 34124), October 16, 2001 (66 FR 52538), and June 23, 2003 (68 FR 37348). The June 27, 2001, amendments implemented site-specific emission control requirements for a pulp mill facility in Georgia. The October 16, 2001, amendments contained technical corrections to the June 27, 2001, amendments. The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.250 - Halogenated Solvent Cleaning (40 Code of Federal Regulations Part 63, Subpart T)

The commission amends §113.250 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart T made by the EPA since September 8, 2000. During this time frame, the EPA amended 40 CFR Part 63, Subpart T on June 23, 2003 (68 FR 37349). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.260 - Group I Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart U)

The commission amends §113.260 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart U made by the EPA since July 16, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart U on June 23, 2003 (68 FR 37349). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.280 - Epoxy Resins Production and Non-Nylon Polyamides Production (40 Code of Federal Regulations Part 63, Subpart W)

The commission amends §113.280 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart W made by the EPA since May 8, 2000. During this time frame, 40 CFR Part 63, Subpart W was amended on June 23, 2003 (68 FR 37350). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.290 - Secondary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart X)

The commission amends §113.290 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart X made by the EPA since December 14, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart X on June 23, 2003 (68 FR 37350). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to provide language more consistent with the revised delegation of authority provisions.

Section 113.300 - Marine Vessel Loading (40 Code of Federal Regulations Part 63, Subpart Y)

The commission amends §113.300 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart Y made by the EPA since September 19, 1995. During this time frame, the EPA amended 40 CFR Part 63, Subpart Y on June 23, 2003 (68 FR 37350). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which

the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.320 - Phosphoric Acid Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AA)

The commission amends §113.320 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart AA made by the EPA since June 13, 2002. During this time frame, 40 CFR Part 63, Subpart AA was amended on June 23, 2003 (68 FR 37351). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.330 - Phosphate Fertilizers Production Plants (40 Code of Federal Regulations Part 63, Subpart BB)

The commission amends §113.330 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart BB made by the EPA since June 13, 2002. During this time frame, 40 CFR Part 63, Subpart BB was amended on June 23, 2003 (68 FR 37351). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.340 - Petroleum Refineries (40 Code of Federal Regulations Part 63, Subpart CC)

The commission amends §113.340 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart CC made by the EPA since May 25, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart CC on June 23, 2003 (68 FR 37351). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.350 - Off-Site Waste and Recovery Operations (40 Code of Federal Regulations Part 63, Subpart DD)

The commission amends §113.350 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart DD made by the EPA since January 8, 2001. During this time frame, 40 CFR Part 63, Subpart DD was amended on June 23, 2003 (68 FR 37351). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.360 - Magnetic Tape Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart EE)

The commission amends §113.360 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart EE made by the EPA since April 9, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart EE on June 23, 2003 (68 FR 37352). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.380 - Aerospace Manufacturing and Rework Facilities (40 Code of Federal Regulations Part 63, Subpart GG)

The commission amends §113.380 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GG made by the EPA since December 8, 2000. During this time frame, the EPA amended 40 CFR Part 63, Subpart GG on June 23, 2003 (68 FR 37352). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.390 - Oil and Natural Gas Production Facilities (40 Code of Federal Regulations Part 63, Subpart HH)

The commission amends §113.390 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HH made by the EPA since June 29, 2001. During this time frame, 40 CFR Part 63, Subpart HH was amended on June 23, 2003 (68 FR 37353). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.400 - Shipbuilding and Ship Repair (Surface Coating) (40 Code of Federal Regulations Part 63, Subpart II)

The commission amends §113.400 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart II made by the EPA since October 17, 2000. During this time frame, 40 CFR Part 63, Subpart II was amended on June 23, 2003 (68 FR 37353). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.410 - Wood Furniture Manufacturing Operations (40 Code of Federal Regulations Part 63, Subpart JJ)

The commission amends §113.410 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart JJ made by the EPA since December 28, 1998. During this time frame, 40 CFR Part 63, Subpart JJ was amended on June 23, 2003 (68 FR 37353). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also rephrased some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.420 - Printing and Publishing (40 Code of Federal Regulations Part 63, Subpart KK)

The commission amends §113.420 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart KK made by the EPA since May 30, 1996. During this time frame, 40 CFR Part 63, Subpart KK was amended on June 23, 2003 (68 FR 37354). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.430 - Primary Aluminum Reduction Plants (40 Code of Federal Regulations Part 63, Subpart LL)

The commission amends §113.430 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart LL made by the EPA since October 7, 1997. During this time frame, 40 CFR Part 63, Subpart LL was amended on June 23, 2003 (68 FR 37354). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.440 - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 Code of Federal Regulations Part 63, Subpart MM)

The commission amends §113.440 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MM made by the EPA since August 6, 2001. During this time frame, 40 CFR Part 63, Subpart MM was amended on February 18, 2003 (68 FR 7713), July 18, 2003 (68 FR 42605), August 5, 2003 (68 FR 46108), December 5, 2003 (68 FR 67954), and May 6, 2004 (69 FR 25323). The February 18, 2003, amendments clarified and consolidated monitoring and testing requirements and added a site-specific alternative standard for a facility in the State of Washington. The July 18, 2003, amendments deleted certain provisions previously adopted on February 18, 2003, which were the subject of adverse comments, and corrected a typographical error and a cross-referencing error. The August 5, 2003, amendments extended the compliance date for a site-specific emission control project in Virginia. The December 5, 2003, amendments implemented technical corrections to restore monitoring and recordkeeping provisions inadvertently deleted by the July 18, 2003, amendments, and added clarifying language which was inadvertently omitted from an emission standard in the January 12, 2001, final rule. The May 6, 2004, amendments corrected cross-references in order to be consistent with changes made in the February 18, 2003, amendments.

Section 113.460 - Tanks-Level 1 (40 Code of Federal Regulations Part 63, Subpart OO)

The commission amends §113.460 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart OO made by the EPA since July 20, 1999. During this time frame, 40 CFR Part 63, Subpart OO was amended on June 23, 2003 (68 FR 37354). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.470 - Containers (40 Code of Federal Regulations Part 63, Subpart PP)

The commission amends §113.470 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart PP made by the EPA since January 8, 2001. During this time frame, 40 CFR Part 63, Subpart PP was amended on June 23, 2003 (68 FR 37355). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.480 - Surface Impoundments (40 Code of Federal Regulations Part 63, Subpart QQ)

The commission amends §113.480 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart QQ made by the EPA since July 20, 1999. During this time frame, 40 CFR Part 63, Subpart QQ was amended on June 23, 2003 (68 FR 37355). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.490 - Individual Drain Systems (40 Code of Federal Regulations Part 63, Subpart RR)

The commission amends §113.490 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart RR made by the EPA since January 8, 2001. During this time frame, 40 CFR Part 63, Subpart RR was amended on June 23, 2003 (68 FR 37355). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.530 - Oil-Water Separators and Organic-Water Separators (40 Code of Federal Regulations Part 63, Subpart VV)

The commission amends §113.530 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart VV made by the EPA since January 8, 2001. During this time frame, 40 CFR Part 63, Subpart VV was amended on June 23, 2003 (68 FR 37355). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.600 - Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 Code of Federal Regulations Part 63, Subpart CCC)

The commission amends §113.600 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart CCC made by the EPA since June 22, 1999. During this time frame, 40 CFR Part 63, Subpart CCC was amended on June 23, 2003 (68 FR 37356). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.610 - Mineral Wool Production (40 Code of Federal Regulations Part 63, Subpart DDD)

The commission amends §113.610 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart DDD made by the EPA since June 1, 1999. During this time frame, 40 CFR Part 63, Subpart DDD was amended on June 23, 2003 (68 FR 37356). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.620 - Hazardous Waste Combustors (40 Code of Federal Regulations Part 63, Subpart EEE)

The commission amends §113.620 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart EEE made by the EPA since December 19, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart EEE on June 23, 2003 (68 FR 37356). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The adopted rule also corrects two typographical errors in §113.620.

Section 113.640 - Pharmaceuticals Production (40 Code of Federal Regulations Part 63, Subpart GGG)

The commission amends §113.640 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart GGG made by the EPA since April 2, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart GGG on June 23, 2003 (68 FR 37356). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.650 - Natural Gas Transmission and Storage Facilities (40 Code of Federal Regulations Part 63, Subpart HHH)

The commission amends §113.650 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart HHH made by the EPA since February 22, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart HHH on June 23, 2003 (68 FR 37357). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also restructured some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.660 - Flexible Polyurethane Foam Production (40 Code of Federal Regulations Part 63, Subpart III)

The commission amends §113.660 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart III made by the EPA since October 7, 1998. During this time frame, the EPA amended 40 CFR Part 63, Subpart III on June 23, 2003 (68 FR 37357). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.670 - Group IV Polymers and Resins (40 Code of Federal Regulations Part 63, Subpart JJJ)

The commission amends §113.670 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart JJJ made by the EPA since August 6, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart JJJ on June 23, 2003 (68 FR 37357), with corrections published on June 2, 2004 (69 FR 31008). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 2, 2004, correction modified 40 CFR §63.1331, Equipment Leak Provisions.

Section 113.690 - Portland Cement Manufacturing Industry (40 Code of Federal Regulations Part 63, Subpart LLL)

The commission amends §113.690 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart LLL made by the EPA since December 6, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart LLL on June 23, 2003 (68 FR 37359). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.700 - Pesticide Active Ingredient Production (40 Code of Federal Regulations Part 63, Subpart MMM)

The commission amends §113.700 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart MMM made by the EPA since September 20, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart MMM on June 23, 2003 (68 FR 37358). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The June 23, 2003, amendments also restructured some sections to more clearly separate delegable requirements from non-delegable requirements, and to provide language more consistent with the revised delegation of authority provisions.

Section 113.710 - Wool Fiberglass Manufacturing (40 Code of Federal Regulations Part 63, Subpart NNN)

The commission amends §113.710 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart NNN made by the EPA since June 14, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart NNN on June 23, 2003 (68 FR 37358). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.720 - Manufacture of Amino/Phenolic Resins (40 Code of Federal Regulations Part 63, Subpart OOO)

The commission amends §113.720 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart OOO made by the EPA since February 22, 2000. During this time frame, the EPA amended 40 CFR Part 63, Subpart OOO on June 23, 2003 (68 FR 37359). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.730 - Polyether Polyols Production (40 Code of Federal Regulations Part 63, Subpart PPP)

The commission amends §113.730 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart PPP made by the EPA since May 8, 2000. During this time frame, the EPA amended 40 CFR Part 63, Subpart PPP on June 23, 2003 (68 FR 37359), with corrections published on July 1, 2004 (69 FR 39862). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority. The July 1, 2004, corrections modified several table headings and corrected Equation 11 in 40 CFR §63.1427.

Section 113.750 - Secondary Aluminum Production (40 Code of Federal Regulations Part 63, Subpart RRR)

The commission amends §113.750 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart RRR adopted by the EPA since December 30, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart RRR on June 23, 2003 (68 FR 37359). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.770 - Primary Lead Smelting (40 Code of Federal Regulations Part 63, Subpart TTT)

The commission amends §113.770 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart TTT adopted by the EPA since June 4, 1999. During this time frame, the EPA amended 40 CFR Part 63, Subpart TTT on June 23, 2003 (68 FR 37360). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.790 - Publicly Owned Treatment Works (40 Code of Federal Regulations Part 63, Subpart VVV)

The commission amends §113.790 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart VVV made by the EPA since October 21, 2002. During this time frame, the EPA amended 40 CFR Part 63, Subpart VVV on June 23, 2003 (68 FR 37360). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.810 - Ferroalloys Production: Ferromanganese and Silicomanganese (40 Code of Federal Regulations Part 63, Subpart XXX)

The commission amends §113.810 by incorporating by reference, without change, all amendments to 40 CFR Part 63, Subpart XXX made by the EPA since March 22, 2001. During this time frame, the EPA amended 40 CFR Part 63, Subpart XXX on June 23, 2003 (68 FR 37360). The June 23, 2003, amendments clarified which provisions of this MACT can be delegated to state, local, and tribal authorities, and identified provisions for which the EPA retains exclusive authority.

Section 113.880 - Organic Liquids Distribution (Non-Gasoline) (40 Code of Federal Regulations Part 63, Subpart EEEE)

The commission adopts new §113.880, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart EEEE adopted by the EPA on February 3, 2004 (69 FR 5063). This MACT standard applies to new and existing non-gasoline organic liquid distribution operations that are located at, or are part of, a major source of hazardous air pollutant emissions. Hazardous air pollutants emitted from these operations include: benzene, ethylbenzene, toluene, vinyl chloride, and a large number of other organic hazardous air pollutants.

Section 113.890 - Miscellaneous Organic Chemical Manufacturing (40 Code of Federal Regulations Part 63, Subpart FFFF)

The commission adopts new §113.890, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart FFFF adopted by the EPA on November 10, 2003 (68 FR 63888). This MACT standard applies to new and existing miscellaneous organic chemical manufacturing process units, wastewater treatment and conveyance systems, transfer operations, and associated ancillary equipment. This standard applies to process units that are located at, or are part of, a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include: toluene, methanol, xylenes, hydrogen chloride, and methylene chloride.

Section 113.920 - Surface Coating of Automobiles and Light-Duty Trucks (40 Code of Federal Regulations Part 63, Subpart IIII)

The commission adopts new §113.920, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart IIII adopted by the EPA on April 26, 2004 (69 FR 22623). This MACT standard applies to new and existing auto and light-duty truck surface coating operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutant emissions. The primary hazardous air pollutants emitted by these facilities include: toluene, xylenes, glycol ethers, methyl ethyl ketone, methyl isobutyl ketone, ethylbenzene, and methanol.

Section 113.940 - Surface Coating of Metal Cans (40 Code of Federal Regulations Part 63, Subpart KKKK)

The commission adopts new §113.940, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart KKKK adopted by the EPA on November 13, 2003 (68 FR 64446). This MACT standard applies to new and existing metal can surface coating operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutants. The hazardous air pollutants emitted by these facilities include: certain glycol ethers, xylenes, hexane, methyl isobutyl ketone (MIBK), and methyl ethyl ketone (MEK).

Section 113.960 - Surface Coating of Miscellaneous Metal Parts and Products (40 Code of Federal Regulations Part 63, Subpart MMMM)

The commission adopts new §113.960, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart MMMM adopted by the EPA on January 2, 2004 (69 FR 157), as amended through April 26, 2004 (69 FR 22660). This MACT standard applies to new and existing miscellaneous metal parts and products surface coating operations located at major sources of hazardous air pollutants. Hazardous air pollutants emitted from these facilities include: xylenes, toluene, methyl ethyl ketone, phenol, cresols/cresylic acid, glycol ethers, styrene, methyl isobutyl ketone, and ethyl benzene. The April 26, 2004, amendments clarified the interaction of 40 CFR Part 63, Subpart MMMM with Subpart IIII, concerning Surface Coating of Automobiles and Light-Duty Trucks.

Section 113.980 - Printing, Coating, and Dyeing of Fabrics and Other Textiles (40 Code of Federal Regulations Part 63, Subpart OOOO)

The commission adopts new §113.980, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart OOOO adopted by the EPA on May 29, 2003 (68 FR 32189). This MACT standard applies to new and existing operations involving printing, coating, slashing, dyeing, or finishing of fabric and other textiles. This standard applies to operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutants. Hazardous air pollutant emissions from these operations include, but are not limited to: toluene, methyl ethyl ketone, methanol, xylenes, methyl isobutyl ketone, methylene chloride, trichloroethylene, n-hexane, glycol ethers, and formaldehyde.

Section 113.990 - Surface Coating of Plastic Parts and Products (40 Code of Federal Regulations Part 63, Subpart PPPP)

The commission adopts new §113.990, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart PPPP adopted by the EPA on April 19, 2004 (69 FR 20990), as amended through April 26, 2004 (69 FR 22660). This MACT standard applies to new and existing plastic parts and products surface coating operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutants. Hazardous air pollutant emissions from

these operations include: methyl ethyl ketone, methyl isobutyl ketone, toluene, certain glycol ethers, and xylenes. The April 26, 2004, amendments clarified the interaction of 40 CFR Part 63, Subpart PPPP with Subpart IIII, concerning Surface Coating of Automobiles and Light-Duty Trucks.

Section 113.1000 - Surface Coating of Wood Building Products (40 Code of Federal Regulations Part 63, Subpart QQQQ)

The commission adopts new §113.1000, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart QQQQ adopted by the EPA on May 28, 2003 (68 FR 31760). This MACT standard applies to new and existing operations involving surface coating of wood building products. This standard applies to operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutants. Hazardous air pollutant emissions from these operations include, but are not limited to: xylenes, toluene, ethyl benzene, methyl ethyl ketone, methyl isobutyl ketone, methanol, styrene, and formaldehyde.

Section 113.1010 - Surface Coating of Metal Furniture (40 Code of Federal Regulations Part 63, Subpart RRRR)

The commission adopts new §113.1010, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart RRRR adopted by the EPA on May 23, 2003 (68 FR 28619). This MACT standard applies to new and existing operations involving surface coating of metal furniture. This standard applies to operations that are a major source, are located at a major source, or are part of a major source of hazardous air pollutants. Hazardous air pollutant emissions from these operations include, but are not limited to: xylenes, toluene, certain glycol ethers, ethylbenzene, and methyl ethyl ketone.

Section 113.1060 - Reinforced Plastic Composites Production (40 Code of Federal Regulations Part 63, Subpart WWWW)

The commission adopts new §113.1060, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart WWWW adopted by the EPA on April 21, 2003 (68 FR 19402). This MACT standard applies to new and existing reinforced plastic composites production facilities that are located at a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: styrene, methyl methacrylate, and methylene chloride.

Section 113.1080 - Stationary Combustion Turbines (40 Code of Federal Regulations Part 63, Subpart YYYY)

The commission adopts new §113.1080, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart YYYY adopted by the EPA on March 5, 2004 (69 FR 10537), as amended through August 18, 2004 (69 FR 51188). This MACT standard applies to new and existing stationary combustion turbines located at a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from stationary combustion turbines include: formaldehyde, toluene, benzene, and acetaldehyde. The August 18, 2004, amendments stayed the effectiveness of emission limitations and operating limitations for lean premix gas-fired turbines and diffusion flame gas-fired turbines.

Section 113.1090 - Stationary Reciprocating Internal Combustion Engines (40 Code of Federal Regulations Part 63, Subpart ZZZZ)

The commission adopts new §113.1090, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart ZZZZ adopted by the EPA on June 15, 2004 (69 FR 33506). This MACT standard applies to new and existing stationary reciprocating internal combustion engines located at a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from stationary reciprocating internal combustion engines include: formaldehyde, acrolein, toluene, methanol, and acetaldehyde.

Section 113.1100 - Lime Manufacturing Plants (40 Code of Federal Regulations Part 63, Subpart AAAAA)

The commission adopts new §113.1100, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart AAAAA adopted by the EPA on January 5, 2004 (69 FR 416). This MACT standard applies to new and existing lime manufacturing units, including lime kilns, lime coolers, and various types of processed stone handling operations. The standard applies to lime manufacturing plants that are major sources, co-located at major sources, or are part of a major source. However, this MACT standard does not apply to lime manufacturing plants that are located at pulp and paper mills or beet sugar factories. Hazardous air pollutant emissions from lime manufacturing plants include, but are not limited to: hydrogen chloride, antimony, arsenic, beryllium, cadmium, chromium, lead, manganese, mercury, nickel, and selenium.

Section 113.1110 - Semiconductor Manufacturing (40 Code of Federal Regulations Part 63, Subpart BBBBB)

The commission adopts new §113.1110, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart BBBBB adopted by the EPA on May 22, 2003 (68 FR 27925). This MACT standard applies to new and existing semiconductor manufacturing operations that are a major source of hazardous air pollutants, are located at a major source of hazardous air pollutants, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: hydrochloric acid, hydrogen fluoride, methanol, glycol ethers, and xylenes.

Section 113.1120 - Coke Ovens: Pushing, Quenching, and Battery Stacks (40 Code of Federal Regulations Part 63, Subpart CCCCC)

The commission adopts new §113.1120, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart CCCCC adopted by the EPA on April 14, 2003 (68 FR 18025), with corrections published on April 22, 2003 (68 FR 19885). This MACT standard applies to each new or existing coke oven battery at a plant that is a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: polycyclic organic matter, benzene, and toluene. The corrections published on April 22, 2003, altered an incorrect compliance date in 40 CFR §63.7283(b) (When Do I Have to Comply with this Subpart?).

Section 113.1140 - Iron and Steel Foundries (40 Code of Federal Regulations Part 63, Subpart EEEEE)

The commission adopts new §113.1140, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart EEEEE adopted by the EPA on April 22, 2004 (69 FR 21923). This MACT standard applies to new and existing iron and steel foundries, which are (or are located at) a

major source of hazardous air pollutants. Hazardous air pollutant emissions from these operations include: metallic compounds such as lead, manganese, cadmium, chromium, and nickel; and numerous organic compounds such as acetophenone, benzene, cumene, dibenzofurans, dioxins, formaldehyde, methanol, naphthalene, phenol, pyrene, toluene, triethylamine, and xylenes.

Section 113.1150 - Integrated Iron and Steel Manufacturing Facilities (40 Code of Federal Regulations Part 63, Subpart FFFFF)

The commission adopts new §113.1150, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart FFFFF adopted by the EPA on May 20, 2003 (68 FR 27663). This MACT standard applies to each new or existing sinter plant, blast furnace, and basic oxygen process furnace shop that are (or are located at) a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: manganese, lead, polycyclic organic matter, benzene, and carbon disulfide.

Section 113.1160 - Site Remediation (40 Code of Federal Regulations Part 63, Subpart GGGGG)

The commission adopts new §113.1160, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart GGGGG adopted by the EPA on October 8, 2003 (68 FR 58190). This MACT standard applies to site remediation projects (such as cleanup of contaminated soil, groundwater, or surface water) that meet all of the following criteria: 1) clean-up remediation materials defined in 40 CFR §63.7957, What Definitions Apply to this Subpart; 2) are co-located at a facility with one or more other stationary sources that emit hazardous air pollutants and meet an affected source definition for a source category that is regulated by another subpart under 40 CFR Part 63; and 3) the facility is a major source of hazardous air pollutant emissions. 40 CFR Part 63, Subpart GGGGG contains exemptions for remediation projects located at gasoline service stations, farms, residential sites, and certain remediation projects conducted under the authority of other environmental regulations, such as the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Response and Compensation Liability Act (CERCLA). Hazardous air pollutant emissions regulated under this MACT standard include a wide variety of compounds listed in Table 1 of 40 CFR Part 63, Subpart GGGGG.

Section 113.1170 - Miscellaneous Coating Manufacturing (40 Code of Federal Regulations Part 63, Subpart HHHHH)

The commission adopts new §113.1170, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart HHHHH adopted by the EPA on December 11, 2003 (68 FR 69185), as amended through December 29, 2003 (68 FR 75033). This MACT standard applies to new and existing miscellaneous coating manufacturing operations that are located at or are part of a major source of hazardous air pollutants. Hazardous air pollutant emissions from these operations include: toluene, xylenes, glycol ethers, methyl ethyl ketone, and methyl isobutyl ketone. The December 29, 2003, amendments corrected a compliance date stated in 40 CFR §63.7995 (When do I have to comply with this subpart?), which should have read "December 11, 2006."

Section 113.1180 - Mercury Emissions from Mercury Cell Chlor-Alkali Plants (40 Code of Federal Regulations Part 63, Subpart IIIII)

The commission adopts new §113.1180, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart IIIII adopted by the EPA on December 19, 2003 (68 FR 70928). This MACT standard applies to new and existing mercury cell chlor-alkali plants. The hazardous air pollutant regulated by this standard is mercury.

Section 113.1190 - Brick and Structural Clay Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart JJJJJ)

The commission adopts new §113.1190, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart JJJJJ adopted by the EPA on May 16, 2003 (68 FR 26722), with corrections published on May 28, 2003 (68 FR 31744). This MACT standard applies to new and existing sources at brick and structural clay products manufacturing plants. This MACT standard applies to brick and structural clay manufacturing facilities that are a major source of hazardous air pollutant emissions, are located at a major source of hazardous air pollutant emissions, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: hydrogen fluoride; hydrogen chloride; and metallic compounds such as antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium. The May 28, 2003, corrections altered an erroneous compliance date.

Section 113.1200 - Clay Ceramics Manufacturing (40 Code of Federal Regulations Part 63, Subpart KKKKK)

The commission adopts new §113.1200, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart KKKKK adopted by the EPA on May 16, 2003 (68 FR 26738), with corrections published on May 28, 2003 (68 FR 31744). This MACT standard applies to new and existing sources at clay ceramics manufacturing facilities. This MACT standard applies to clay ceramics manufacturing facilities that are a major source of hazardous air pollutant emissions, are located at a major source of hazardous air pollutant emissions, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: hydrogen fluoride; hydrogen chloride; and metallic compounds such as antimony, arsenic, beryllium, cadmium, chromium, cobalt, mercury, manganese, nickel, lead, and selenium. The May 28, 2003, corrections altered an erroneous compliance date.

Section 113.1210 - Asphalt Processing and Asphalt Roofing Manufacturing (40 Code of Federal Regulations Part 63, Subpart LLLLL)

The commission adopts new §113.1210, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart LLLLL initially adopted by the EPA on April 29, 2003 (68 FR 22991), and republished with corrections on May 7, 2003 (68 FR 24577). This MACT standard applies to new and existing asphalt processing and asphalt roofing manufacturing facilities that are a major source of hazardous air pollutant emissions, are located at a major source of hazardous air pollutants emissions, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: formaldehyde, hexane, hydrogen chloride, phenol, polycyclic organic matter, and toluene.

Section 113.1220 - Flexible Polyurethane Foam Fabrication Operations (40 Code of Federal Regulations Part 63, Subpart MMMMM)

The commission adopts new §113.1220, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart MMMMM adopted by the EPA on April 14, 2003 (68 FR 18070). This MACT standard applies to new and existing flexible polyurethane foam fabrication facilities that are located at or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: hydrochloric acid, 2,4-toluene diisocyanate, hydrogen cyanide, and methylene chloride.

Section 113.1230 - Hydrochloric Acid Production (40 Code of Federal Regulations Part 63, Subpart NNNNN)

The commission adopts new §113.1230, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart NNNNN adopted by the EPA on April 17, 2003 (68 FR 19090). This MACT standard applies to new and existing hydrochloric acid production units that normally produce liquid hydrochloric acid at a concentration of 30 weight percent or greater, and are located at a major source of hazardous air pollutant emissions, or are part of a major source of hazardous air pollutant emissions. The primary hazardous air pollutant that will be controlled with this MACT standard is hydrochloric acid.

Section 113.1250 - Engine Test Cells/Stands (40 Code of Federal Regulations Part 63, Subpart PPPPP)

The commission adopts new §113.1250, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart PPPPP adopted by the EPA on May 27, 2003 (68 FR 28785), with corrections published on August 28, 2003 (68 FR 51830). This MACT standard applies to new and existing engine test cells/stands that are located at a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: toluene, benzene, mixed xylenes, and 1,3-butadiene. The August 28, 2003, corrections altered the title of the subpart.

Section 113.1270 - Taconite Iron Ore Processing (40 Code of Federal Regulations Part 63, Subpart RRRRR)

The commission adopts new §113.1270, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart RRRRR adopted by the EPA on October 30, 2003 (68 FR 61888). This MACT standard applies to new and existing taconite ore processing facilities, including ore crushing and handling operations, ore dryers, indurating furnaces, and finished pellet handling operations. The standard applies to ore processing facilities that are major sources of hazardous air pollutant emissions (or are part of a major source of hazardous air pollutant emissions). Hazardous air pollutants emitted from taconite ore processing operations include: metal compounds such as manganese, arsenic, lead, nickel, chromium, and mercury; products of incomplete combustion, including formaldehyde; and the acid gases hydrogen chloride and hydrogen fluoride.

Section 113.1280 - Refractory Products Manufacturing (40 Code of Federal Regulations Part 63, Subpart SSSSS)

The commission adopts new §113.1280, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart SSSSS adopted by the EPA on April 16, 2003 (68 FR 18747). This MACT standard applies to new and existing refractory products manufacturing facilities that are a major source of hazardous air pollutant emissions, are located at a major source of hazardous air pollutant emissions, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: ethylene glycol, formaldehyde, hydrogen fluoride, hydrochloric acid, methanol, phenol, and polycyclic organic matter.

Section 113.1290 - Primary Magnesium Refining (40 Code of Federal Regulations Part 63, Subpart TTTTT)

The commission adopts new §113.1290, which will incorporate by reference, without change, the final promulgated rules in 40 CFR Part 63, Subpart TTTTT adopted by the EPA on October 10, 2003 (68 FR 58620). This MACT standard applies to new and existing primary magnesium refining facilities that are major sources of hazardous air pollutant emissions, or are part of a major source of hazardous air pollutant emissions. Hazardous air pollutant emissions from these operations include, but are not limited to: chlorine, hydrochloric acid, dioxins and furans, and trace amounts of several hazardous air pollutant metals.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMIT PROGRAM

Because Chapter 113 contains applicable requirements under 30 TAC Chapter 122, Federal Operating Permits, owners or operators subject to the Federal Operating Permit Program must, consistent with the amendment process in Chapter 122, revise their operating permit to include the amended Chapter 113 requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the adopted rules is to adopt MACT standards mandated by the FCAA and the amendments to that statute. The EPA is developing these national MACT standards to regulate emissions of hazardous air pollutants under 42 USC, §7412. Hazardous air pollutant sources affected by the MACT standards are required to comply with the federal standards whether or not the commission adopts or takes delegation of the standards from EPA. The adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond existing requirements to comply with the federal standards. The adopted rules are intended to protect the environment, but are not anticipated to have material adverse effects beyond what is already required to comply with federal MACT standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the adopted rules do not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative

of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the requirements because the MACT standards in this adoption are federal technology-based standards which will be incorporated by reference, and therefore, will not exceed any standard set by federal law. This adoption is not an express requirement of state law, but was developed by EPA as MACT standards mandated by the FCAA and the amendments to that statute. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government. The adopted rules were not developed solely under the general powers of the agency, but are adopted under the Texas Clean Air Act (TCAA), as codified in Texas Health and Safety Code, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; and §382.051, which authorizes the commission to adopt rules as necessary to comply with changes in federal law and regulations applicable to air permits.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to facilitate implementation and enforcement of MACT standards by the state. This rulemaking will not create any additional burden on private real property. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission prepared a consistency determination for the rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rules is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the rules is Emission of Air Pollutants. These rules are consistent because they only incorporate by reference the federal MACT standards that pertain to certain industries and processes. The MACT standards provide the highest level of control of air emissions that is achievable.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on January 31, 2005, but no oral comments were received. The public comment period ended at 5:00 p.m. on January 31, 2005. No written comments were submitted.

STATUTORY AUTHORITY

The new and amended sections are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and the duties under the provisions of the TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amended and new sections are also adopted under Texas Health and Safety Code, TCAA, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.016, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and §382.051, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA.

The adopted new and amended sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502140
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Texas Commission on Environmental Quality
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CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

The Texas Commission on Environmental Quality (commission) adopts the amendments to §116.12 and §116.150 *with changes* to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1016).

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

After adoption of the Federal Clean Air Act (FCAA) Amendments of 1990, the EPA classified the designated four areas of Texas that failed to meet the one-hour national ambient air quality standard (NAAQS) for the air contaminant ozone. Each area was classified by the EPA based on the amount by which it exceeded the ozone NAAQS of 0.12 parts per million (ppm) based on a

peak one-hour concentration of ozone. Eight counties in the Houston-Galveston-Brazoria (HGB) area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Montgomery, and Waller) were classified as Severe and El Paso County was classified as Serious. Four counties in the Dallas- Fort Worth (DFW) area (Collin, Dallas, Denton, and Tarrant) were originally classified as Moderate and then reclassified to Serious. Three counties in the Beaumont-Port Arthur (BPA) area (Hardin, Jefferson, and Orange) were originally classified as Serious, then reclassified to Moderate, and reclassified again, in 2004, to Serious. The classification of an area has specific effects on sources of air contaminants within the area including what will be considered a major source of contaminants. In the case of ozone, the contaminants of concern are volatile organic compounds (VOC) and nitrogen oxides (NO_x), referred to as ozone precursers.

If a proposed project (modification of existing facilities or new construction) is determined to be a major modification, the project is subject to federal nonattainment new source review (NNSR) and specific levels of pollution control, which generally mean that the source will be required to meet the lowest achievable emission rate (LAER) and offset the emissions increase.

To determine if a modification at a major source results in an emission increase that would make the project a major modification, the source owner performs a netting exercise if the project emission increase is greater than the netting trigger (five tons per year (tpy) under current commission rules). Netting is an accounting procedure used to determine the amount of increase in emissions by a source over a specified period of time. All emission increases and decreases at a source over the specified time (netting period) are added or subtracted and, if the resulting figure is at or above the major modification threshold, the source becomes subject to NNSR. This major modification threshold is determined by an area's classification (Severe, Serious, Moderate). The netting trigger and netting period are the principal subjects of this adoption.

On April 30, 2004, the EPA adopted the Phase 1 Implementation Rule (69 FR 23951), implementing a new eight-hour ozone NAAQS, effective June 15, 2004. On the same date, the EPA designated and classified areas that were not in attainment of the eight-hour standard (69 FR 23858). In the Phase 1 Implementation Rule, the EPA stated that it plans to issue a second final rule, Phase 2, which will address many of the planning and control obligations under FCAA, §172 and §182 that will apply for purposes of implementing the eight-hour ozone NAAQS. These rules will include, among other things, new source review (NSR). The EPA designated four areas of Texas as nonattainment for the eight-hour ozone standard, and classifications under the new standard are different from the classifications under the one-hour ozone standard. Specifically, HGB and DFW are classified as Moderate, BPA is classified as Marginal, and El Paso is in attainment of the eight-hour standard. In addition to the four counties in the DFW area classified under the one-hour standard, five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were designated as Moderate nonattainment. The San Antonio area, consisting of Bexar, Comal, and Guadalupe Counties, was designated nonattainment under FCAA, Title I, Part D, Subpart 1 (42 United States Code (USC), §7502) with a deferred effective date, due to its participation in the Early Action Compact Program. In the Phase 1 Implementation Rule, the EPA also adopted a rule that provides that the EPA will revoke the one-hour standard in full, including designations and classifications, one year following the effective date of the designations for the eight-hour NAAQS. One year after the effective date of the designations for the eight-hour ozone standard is June 15, 2005.

The new EPA Phase 1 Implementation Rules make no changes to the netting procedure or thresholds. The commission is adopting the federal model concerning netting triggers and periods with the exception of the netting trigger in a Serious or Severe nonattainment area where the commission is retaining its existing five tpy trigger. The commission eliminated the netting period for larger major sources that required netting going back to 1992. This period is now too long to be useful and could not be justified for the sources in the five new nonattainment counties in the DFW area. Under the new eight-hour ozone standard, there are no areas currently classified as Serious or Severe. The proposed netting triggers for all eight- hour ozone nonattainment areas is now 40 tpy and all netting periods are five years.

Application of the eight-hour ozone standard for NNSR became effective June 15, 2004, and the commission is updating its rules to implement the necessary changes. On September 24, 2004, in response to a petition by EarthJustice and other environmental groups, the EPA granted a partial reconsideration of the Phase 1 Implementation Rule adopted April 30, 2004, allowing states to apply federal NNSR based on an eight-hour classification. The result of this reconsideration could be a return to the one-hour ozone standard for application of federal NNSR. Therefore, the commission is including contingency language in §116.150, New Major Source or Major Modification in Ozone Nonattainment Areas, and in the table footnotes in the figure located in the definition of major modification in §116.12. This contingency language will go into effect if the EPA decides to require states to return to a one-hour standard for federal NNSR determination.

Adopted changes to the 30 TAC Chapter 101 corresponding rulemaking are also published in this issue of the *Texas Register*.

NO_x Netting and Mass Emission Cap and Trade

The new five-year contemporaneous period for all sources will allow sources to ignore whether the HGB NO_x mass emission cap and trade program (MECT) in Chapter 101, Subchapter H, is driving the reduction when determining whether an emission reduction made at a plant site at a facility subject to the MECT is creditable for netting purposes. This will apply only to NO_x sources subject to the MECT in HGB for netting exercises only and will not apply to NO_x credits or offsets. This determination for sites subject to HGB MECT and NO_x netting will not affect the MECT or the SIP because the MECT cap is ultimately the governing factor in the amount of NO_x emitted. Furthermore, the moving five-year netting period will ensure that emission reduction strategies driven by MECT compliance at a plant site that are used to "net out" emission increases from increases at the site will have to occur within the same time frame (five years) as the increases. The MECT allows for trading of a fixed number of emission allowances so the emission reductions are not binding on any specific unit or site but it ensures that area-wide emission reductions are made, regardless of changes at any particular site.

SECTION BY SECTION DISCUSSION

The commission made administrative changes for better readability, conformity with the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004, and consistency with other commission rules. The commission also made corrections to citations of federal and state law and added USC references to citations of sections of the FCAA.

§116.12, Nonattainment Review Definitions

The commission amended the definition of contemporaneous period in paragraph (7) to require that netting be performed from the date of a modification going back a period of 60 months for all netting exercises. This period is more representative of recent activity as compared to a period that goes back to 1992 and is consistent with the EPA period.

The commission added new footnotes 6 and 7 to the table in the figure located in the definition of major modification in paragraph (11)(A) that require sources in areas that were classified nonattainment for ozone under a one-hour ozone standard to return to the major source thresholds, major modification thresholds, and offset ratios for the one-hour standard for federal NNSR applicability if the EPA requires states to use the one-hour standard after reconsideration of its rule implementing the new eight-hour standard.

Footnote 7 also requires applications submitted for facilities that would be located in areas designated under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502), be evaluated as if the area was classified as Marginal under FCAA, Title I, Part D, Subpart 2 (42 USC, §7502). The evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification. Currently, only San Antonio is designated under Subpart 1. This is necessary due to the Phase 1 Implementation Rule that apply to areas designated under Subparts 1 or 2.

The commission deleted subparagraphs (E) and (F) from the definition of net emissions increase in paragraph (13). The subparagraphs contained references to a contemporaneous period going back to November 15, 1992.

§116.150, New Major Source or Major Modification in Ozone Nonattainment Areas

For ease of understanding, the commission reformatted the previously existing subsection (a) into additional subsections and added new language to address the eight-hour netting procedures.

The commission adopts the reformatted subsection (a) to apply major modification procedures to all NSR authorizations issued or claimed. In addition to aligning the date with the effective date of the new designations, the commission is adopting this addition because netting procedures apply to sources authorized under standard permit or permit by rule to demonstrate that modifications under those authorizations are not major.

New subsection (b) contains language addressing the control requirements applicable to major sources or major modifications. The rule citation where the control requirements are found now reads "subsection (e)(1) - (4) of this section." The commission changed the citation concerning the exception for NO_x sources in El Paso County from subsection (b) to subsection (f). The commission also changed a reference to subsection (c) because it was obsolete. The phrase "located in the definition of major modification" was added from proposal for better clarification.

The commission adopts new subsection (c), which contains a new netting trigger of 40 tpy for areas classified as Marginal or Moderate ozone nonattainment. The commission retains the five tpy netting trigger for areas classified as Serious or Severe.

The commission adopts new subsection (d), which contains contingency language that will go into effect if the EPA, after reconsideration of the eight-hour standard, requires states to use the area's one-hour standard classification for determining applicability of NNSR. The contingency language will require sources in areas that were classified nonattainment for ozone under a one-hour ozone standard to return to a netting trigger of five tpy, which is based on a one-hour ozone standard for the applicability of federal NNSR. The commission added this language because EPA agreed to reconsider the eight-hour designations in reaction to lawsuits filed by EarthJustice and other environmental organizations.

New subsection (e) contains language from previously existing subsection (a) concerning emission standards and offsets for sources and modifications classified as major sources and modifications. The phrase "located in the definition of major modification" was added from proposal for better clarification.

New subsection (f) exempts sources located in El Paso County from the requirements of this section concerning NO_x emissions and contains identical language from previously designated subsection (b).

The commission also made administrative changes for readability, conformity with drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004, and consistency with other commission rules.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments revise the netting trigger and netting period for projects that are a major modification and are therefore subject to federal NNSR for air quality permitting and specific levels of pollution control. The amendments also make NNSR requirements applicable to the San Antonio area and the five additional counties in the DFW area. Because San Antonio is an early action compact area, it has a deferred effective date of September 30, 2005, and will continue to be deferred as it remains in compliance with the compact agreements. The amendments also make changes to the definition of contemporaneous period and net emissions increase as well as changes to the figure in the definition of major modification, and nonsubstantive organizational changes. The adopted amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract

between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code (THSC) and Texas Water Code (TWC), which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the amendments do not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted amendments. The specific purpose of this rulemaking is to revise the netting trigger and netting period for projects that are a major modification and are therefore subject to federal NNSR for air quality permitting and specific levels of pollution control. The amendments implement NNSR requirements for the newly designated San Antonio area and the five additional counties in the DFW area. The amendments also make nonsubstantive organizational changes. Promulgation and enforcement of the adopted amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the adopted amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants are authorized and the adopted revisions maintain the same level of emissions control as the previously existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 116.12 and 116.150 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits Program. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program that modify any NSR authorized sources at their sites are subject to the amended requirements of §116.12 and §116.150.

PUBLIC COMMENT

The commission conducted a public hearing in Austin on March 17, 2005. Four comments were received during the public comment period, which closed on March 28, 2005. Comments were received from: Sierra Club, Houston Regional Group (HSC); Baker Botts L.L.P. on behalf of Texas Industry Project (TIP); EPA; and Clark, Thomas, and Winters on behalf of Enbridge Gathering LP, Acacia Natural Gas Corporation, a subsidiary of Devon Energy Corporation, and Energy Transfer Company (CTW). HSC opposed the proposal, while TIP, CTW, and EPA generally supported the proposal with comments.

TIP commented that the commission proposed two unnecessary word changes in §116.112(10) and (11)(B) where the term "shall not" was changed to "may not." TIP stated that Texas Government Code, §311.016(5) makes clear that the terms are synonymous and commented that the term should not be changed to eliminate potential confusion.

The commission reviewed the use of the terms "shall not" and "may not" and their use according to the *Texas Legislative Council Drafting Manual* and will leave the term "shall not" unchanged.

HSC stated that the 40 tpy netting trigger will allow greater health, mortality, safety, and environmental effects in the nonattainment area and suggested that the commission reject the standard.

The commission acknowledges that a 40 tpy netting trigger will allow more projects to be authorized without a netting analysis, but the commission disagrees that this will result in adverse health effects. Like the one-hour ozone standard, the eight-hour standard is health based, and the 40 tpy trigger is based on the eight- hour standard. The 40 tpy trigger has been the netting trigger for Moderate areas since the FCAA amendments of 1990. The commission has not changed the rule in response to this comment.

TIP commented on a paragraph in the preamble concerning the ability to credit reductions under the HGB NO_x MECT, which states that "the commission will allow the reductions required by the HGB NO_x mass emission cap and trade program (MECT) in 30 TAC Chapter 101, Subchapter H, to be creditable for netting purposes." TIP expressed the belief that this statement incorrectly suggests that the proposals in Chapter 116 affect the ability to credit reductions under the MECT.

The rule does not affect the ability of a site to generate excess allowances under the MECT by reducing emissions. The statement identified by the commenter clarifies that reductions made under the MECT to comply with a site's allocation will be considered surplus for netting purposes.

CTW commented that the commission should make an independent determination of a return to a one-hour ozone standard should EPA make that decision. CTW stated that the commission should apply the one-hour standard only to the four counties originally in the DFW nonattainment area.

Texas would be unable to make an independent determination since the designation and classification of areas is based on a national air standard and is determined at the federal level. The commission has not changed the rule in response to this comment.

EPA requested that the commission provide rationale for how a five-year contemporaneous period will affect the strategy to attain and maintain an eight-hour ozone standard and whether a five tpy netting trigger combined with that period will provide sufficient reductions.

A five-year contemporaneous period is the same as required for Moderate and Marginal areas under federal rules and is more consistent with the baseline used in SIP modeling demonstrations. The tagged netting window for sources with emissions greater than 250 tpy required that emissions increases and decreases made well before the SIP baseline year be considered in whether a project would be subject to nonattainment review. Given that fewer than 20 nonattainment permits were issued in Texas prior to 2001, it is likely that including emission increases and decreases prior to that date in netting exercises would result in a lower net emissions increase at most sites.

The five tpy netting trigger will only come into play if a nonattainment area should become subject to the requirements associated with a Serious or Severe nonattainment designation. It was accepted by EPA as equivalent to the federal standard provided that sources with a potential to emit greater than 250 tpy maintained a contemporaneous period back to 1992 to ensure that any small emission increases were included in the contemporaneous period. The federal applicability analysis (netting) associated with the issued nonattainment permits in Texas was reviewed prior to these rules being proposed to determine if including this additional period would have resulted in any of those projects being subject to nonattainment review. The commission was unable to identify any cases where nonattainment review would not have been required with a five-year contemporaneous period. Based on this experience, a five-year contemporaneous period with a five tpy netting trigger would be equivalent to the commission's current rules for Serious and Severe nonattainment areas.

The commission established cap and trade programs in the HGB nonattainment area for NO_x and highly reactive volatile organic compounds, as defined in 30 TAC §115.10. These programs will ensure that emissions in that area will be consistent with what is necessary for the SIP, regardless of what construction or modifications take place under NSR. Finally, the commission will ensure that the SIP demonstration has the appropriate growth factor.

EPA requested that the commission clarify whether it interprets its SIP to make nonattainment NSR requirements applicable to areas that may be designated nonattainment in the future. EPA requested clarification of the timing of applicability of prevention of significant deterioration and NNSR requirements for previously designated and newly designated nonattainment areas prior to the effective dates of both the eight-hour ozone designations and withdrawal of the one-hour ozone standard. Specifically, EPA requested clarification that NNSR requirements apply to final permits issued after June 15, 2004, in areas designated as nonattainment of the eight-hour as well as the one-hour ozone standard and that the date of permit issuance, not administrative completeness, determines applicability of NSR requirements. EPA asked whether the commission will interpret its SIP to require areas that may be designated as nonattainment in the future be subject to federal regulations at 40 CFR Part 51, Appendix S until the SIP is revised to include the area or will the NSR requirements become automatically applicable upon the effective date of the designation.

The commission has historically interpreted its SIP approved rules to use the administratively complete date to determine which rules apply to a particular permit. Permit applications that were administratively complete before this rulemaking adoption are processed under those rules, which are part of Texas' approved SIP. Adopted §116.150(a) continues the commission's policy to apply the rules based on when permit applications are administratively complete, and specifically provides that the rule applies to all NSR authorizations that are administratively complete after June 15, 2004. EPA rules do not provide a clear answer on when a new designation applies to pending permit applications. EPA has addressed areas in transition through 40 CFR Part 51, Appendix S, and policy memos, but EPA acknowledges that areas that have a SIP approved program in place for newly designated areas are not subject to Appendix S. Therefore, the commission will continue to follow the rules in its SIP.

EPA also requested that the commission clarify that requirements for the one-hour standard remain applicable until June 15, 2005, and that NSR applications are reviewed for one-hour applicability.

The commission will apply the requirements for compliance with the one-hour standard for permits that were administratively complete on or before June 15, 2004, and will not require a separate review under the eight-hour ozone standard for those permits. The commission agrees that the requirements for the one-hour standard remain applicable until June 15, 2005.

EPA commented that the commission's definition of nonattainment area in §101.1(67) and §116.12(11) are generic, but that §101.1(67) also lists specific counties in each nonattainment area under both ozone NAAQS.

The federal citations are included in the definition of nonattainment area in §101.1(67), and as referenced in the definition of major modification in §116.12(11), Table I, Footnote 1. In a concurrent rulemaking, the commission is updating the definition of nonattainment area in §101.1(67).

EPA also noted that the preamble refers to an effective date of the eight-hour standard of June 15, 2005, and requested a correction to June 15, 2004.

The commission has corrected the effective date of the eight-hour standard.

EPA requested that the commission clarify that any reduction under the MECT will only occur at the source at which the proposed increase will occur. EPA also requested clarification of an apparent conflict of the preamble statement, which states that reductions under the MECT can be used for netting purposes with §101.352(d), which states that allowances cannot be used for netting requirements under Chapter 116.

Reductions occurring under the MECT that may simultaneously be used for netting must occur at the same site where the proposed emissions increase will occur. The preamble statement prohibiting allowances from being used for netting requirements addresses the ability for a site with a proposed emissions increase to purchase excess allowances from another site to use in netting. The preamble has been revised to clarify that emission reductions shown in netting must occur at the same NNSR

source. Emission reductions used in netting must occur at that source and cannot be transferred to a different source for use in netting. Emission reductions used to generate and sold as emission reduction credits are not creditable for netting.

SUBCHAPTER A. DEFINITIONS

30 TAC §116.12

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; and §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, and 382.0518.

§116.12. Nonattainment Review Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. The terms in this section are applicable to permit review for major source construction and major source modification in nonattainment areas. In addition to the terms that are defined by the TCAA, and in §101.1 of this title (relating to Definitions), the following words and terms, when used in §116.150 and §116.151 of this title (relating to Nonattainment Review), have the following meanings, unless the context clearly indicates otherwise.

(1) Actual emissions--Actual emissions as of a particular date are equal to the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that precedes the particular date and that is representative of normal source operation. The executive director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The executive director may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions, e.g., when the allowable limit is reflective of actual emissions. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Allowable emissions--The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate, or hours of operation, or both), and the most stringent of the following:

(A) the applicable standards specified in 40 Code of Federal Regulations, Part 60 or 61;

(B) the applicable state implementation plan emissions limitation including those with a future compliance date; or

(C) the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

(3) Begin actual construction--In general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(4) Building, structure, facility, or installation--All of the pollutant-emitting activities that belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities are considered to be part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

(5) Commence--As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(B) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(6) Construction--Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

(7) Contemporaneous period--For major sources the period between:

(A) the date that the increase from the particular change occurs; and

(B) 60 months prior to the date that construction on the particular change commences.

(8) *De minimis* threshold test (netting)--A method of determining if a proposed emission increase will trigger nonattainment review. The summation of the proposed increase in tons per year with all other creditable source emission increases and decreases during the contemporaneous period is compared to the MAJOR MODIFICATION column of Table I located in the definition of major modification in this section for that specific nonattainment area. If the major modification level is exceeded, then nonattainment review is required.

(9) Lowest achievable emission rate--For any emitting facility, that rate of emissions of a contaminant that does not exceed the amount allowable under applicable new source performance standards promulgated by the United States Environmental Protection Agency under 42 United States Code, §7411, and that reflects the following:

(A) the most stringent emission limitation that is contained in the rules and regulations of any approved state implementation plan for a specific class or category of facility, unless the owner or operator of the proposed facility demonstrates that such limitations are not achievable; or

(B) the most stringent emission limitation that is achieved in practice by a specific class or category of facilities, whichever is more stringent.

(10) Major facility/stationary source--Any facility/stationary source that emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I located in the definition of major modification in this section or more of any air contaminant (including volatile organic compounds (VOCs)) for which a national ambient air quality standard has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for VOCs or nitrogen oxides is considered to be major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 Code of Federal Regulations §51.165(a)(1)(iv)(C).

(11) Major modification--As follows.

(A) Any physical change in, or change in the method of operation of a facility/stationary source that causes a significant net emissions increase for any air contaminant for which a national ambient air quality standard (NAAQS) has been issued. At a facility/stationary source that is not major prior to the increase, the increase by itself must equal or exceed that specified in the MAJOR SOURCE column of Table I of this section. At an existing major facility/stationary source, the increase must equal or exceed that specified in the MAJOR MODIFICATION column of Table I.
Figure: 30 TAC §116.12(11)(A)

(B) A physical change or change in the method of operation shall not include:

(i) routine maintenance, repair, and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan under the Federal Power Act;

(iii) use of an alternative fuel by reason of an order or rule of 42 United States Code, §7425;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved under this chapter;

(vi) an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976); or

(vii) any change in ownership at a stationary source.

(12) Necessary preconstruction approvals or permits--Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations that are part of the applicable state implementation plan.

(13) Net emissions increase--The amount by which the sum of the following exceeds zero: the total increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, plus any sourcewide creditable contemporaneous emission increases, minus any sourcewide creditable contemporaneous emission decreases.

(A) An increase or decrease in actual emissions is creditable only if both of the following conditions are met:

(i) it occurs during the contemporaneous period; and

(ii) the executive director has not relied on it in issuing a nonattainment permit for the source (under regulations approved during which the permit is in effect) when the increase in actual emissions from the particular change occurs.

(B) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(C) A decrease in actual emissions is creditable only to the extent that all of the following conditions are met:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the reviewing authority has not relied on it in issuing a prevention of significant deterioration or a nonattainment permit, or the state has not relied on the decrease to demonstrate attainment or reasonable further progress; and

(iv) the decrease has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(D) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(14) Offset ratio--For the purpose of satisfying the emissions offset reduction requirements of 42 United States Code, §7503(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of emissions to total allowable emissions increases of such pollutants. The minimum offset ratios are included in Table I under the definition of major modification of this section. In order for a reduction to qualify as an offset, it must be certified as an emission credit under Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking or Trading; or Discrete Emission Credit Banking and Trading), except as provided for in §116.170(b) of this title (relating to Applicability of Emission Reductions as Offsets). The reduction must not have been relied on in the issuance of a previous nonattainment or prevention of significant deterioration permit.

(15) Potential to emit--The maximum capacity of a facility/stationary source to emit a pollutant under its physical and operational design. Any physical or enforceable operational limitation on the capacity of the facility/stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, may be treated as part of its design only if the limitation or the effect

it would have on emissions is federally enforceable. Secondary emissions, as defined in 40 Code of Federal Regulations §51.165(a)(1)(viii), do not count in determining the potential to emit for a stationary source.

(16) Project net--The sum of the following: the total proposed increase in emissions resulting from a physical change or change in the method of operation at a stationary source, minus any sourcewide creditable actual emission decreases proposed at the source between the date of application for the modification and the date the resultant modification begins emitting. Increases and decreases must meet the creditability criteria listed under the definition of net emissions increase in this section.

(17) Secondary emissions--Emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well-defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

(18) Stationary source--Any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under 42 United States Code, §§7401 *et seq.*

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2005.

TRD-200502134
Stephanie Bergeron Perdue
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Texas Commission on Environmental Quality
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SUBCHAPTER B. NEW SOURCE REVIEW PERMITS
DIVISION 5. NONATTAINMENT REVIEW

30 TAC §116.150

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue permits and adopt rules necessary for permits issued under THSC, Chapter 382; and §382.0518, concerning Preconstruction Permit, which requires that a permit be obtained from the commission prior to new construction or modification of an existing facility.

The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.051, 382.0518.

§116.150. New Major Source or Major Modification in Ozone Nonattainment Areas.

(a) This section applies to all new source review authorizations that are administratively complete after June 15, 2004, for new construction or modification of facilities located in any area designated as nonattainment for ozone in accordance with 42 United States Code (USC), §7407.

(b) The owner or operator of a proposed new or modified facility that will be a new major stationary source of volatile organic compound (VOC) emissions or nitrogen oxides (NO_x) emissions, or the owner or operator of an existing major stationary source of VOC or NO_x emissions that will undergo a major modification with respect to VOC or NO_x, shall meet the requirements of subsection (e)(1) - (4) of this section, except as provided in subsection (f) of this section. Table I located in the definition of major modifications in §116.12 of this title (relating to Nonattainment Review Definitions) specifies the various classifications of nonattainment along with the associated emission levels that designate a major stationary source or major modification for those classifications.

(c) Except as noted in subsection (f) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x, unless at least one of the following conditions are met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tons per year (tpy) of the individual nonattainment pollutant in areas classified under Federal Clean Air Act (FCAA), Title I, Part D, Subpart 2 (42 USC, §7511) classified as Serious or Severe;

(2) the proposed emissions increases associated with a project, without regard to decreases, is less than 40 tpy of the individual nonattainment pollutant in areas classified under FCAA, Title I, Part D, Subpart 1 (42 USC, §7502) and for those under FCAA, Title I, Part D, Subpart 2 (42 USC, §7511) classified as Marginal or Moderate; or

(3) the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(d) For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight- hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for nonattainment new source review according to that area's one-hour standard classification, except as noted in subsection (b) of this section regarding NO_x, the *de minimis* threshold test (netting) is required for all modifications to existing major sources of VOC or NO_x in that area, unless at least one of the following conditions is met:

(1) the proposed emissions increases associated with a project, without regard to decreases, is less than five tpy of the individual nonattainment pollutant; or

(2) the project emissions increases coupled with project actual emissions decreases for the same pollutant, summed as the project net, are less than or equal to zero tpy.

(e) In applying the *de minimis* threshold test, if the net emissions increases, aggregated over the contemporaneous period, are greater than the major modification levels stated in Table I located in the definition of major modification in §116.12 of this title, then the following requirements apply.

(1) The proposed facility shall comply with the lowest achievable emission rate (LAER) as defined in §116.12 of this title for the nonattainment pollutants for which the facility is a new major source or major modification except as provided in paragraph (3)(B) of this subsection and except for existing major stationary sources that have a potential to emit (PTE) of less than 100 tpy of the applicable nonattainment pollutant. For these sources, best available control technology (BACT) can be substituted for LAER. LAER shall otherwise be applied to each new emission unit and to each existing emission unit at which the net emissions increase will occur as a result of a physical change or change in method of operation of the unit.

(2) All major stationary sources owned or operated by the applicant (or by any person controlling, controlled by, or under common control with the applicant) in the state must be in compliance or on a schedule for compliance with all applicable state and federal emission limitations and standards.

(3) At the time the new or modified facility or facilities commence operation, the emissions increases from the new or modified facility or facilities must be offset. The proposed facility shall use the offset ratio for the appropriate nonattainment classification as defined in §116.12 of this title and shown in Table I of §116.12 of this title. Internal offsets that are generated at the source and that otherwise meet all creditability criteria can be applied as follows.

(A) Major stationary sources with a PTE of less than 100 tpy of an applicable nonattainment pollutant are not required to undergo nonattainment new source review under this section, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1.

(B) Major stationary sources with a PTE of greater than or equal to 100 tpy of an applicable nonattainment pollutant can substitute BACT for LAER, if the project increases are offset with internal offsets at a ratio of at least 1.3 to 1. Internal offsets used in this manner can also be applied to satisfy the offset requirement.

(4) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source. The analysis must demonstrate that the benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(f) For sources located in the El Paso ozone nonattainment area as defined in §101.1 of this title (relating to Definitions), the requirements of this section do not apply to NO_x emissions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.36

The Texas Department of Public Safety adopts amendments to §4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1593).

Amendments to the section are necessary in order to correct an inaccuracy listed in subsection (f)(2).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

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CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §21.1

The Texas Department of Public Safety adopts an amendment to §21.1, concerning Standards for Vehicle Equipment, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1593).

Section 21.1 provides specifications and performance standards for vehicle equipment to include lighting devices and after-market window sunscreening.

Amendment to the section is necessary in order to correct a textual error in (f)(6)(A) that affected the flexibility of the medical exemption for vehicle window tint. This resulted in a limit on the extent of the medical exception.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER F. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.73

The Texas Department of Public Safety adopts amendments to §23.73, concerning Vehicle Inspection Fees, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1594).

Section 23.73 specifies the fees inspection stations may charge vehicle operators for and in conjunction with a vehicle inspection.

Amendments to the section are necessary in order for the department to adopt the emissions testing fee as adopted by the Texas Commission on Environmental Quality (TCEQ) for the Austin area Early Action Compact (EAC) I/M program for Travis and Williamson counties. Effective on September 1, 2005, in these counties, the fee for an emissions inspection is $16.00. Additional amendments are adopted to clarify allowable practices relating to advertising and the combination of services offered in conjunction with inspection services. During previous rulemaking, as published in the March 25, 2002, issue of the *Texas Register* (27 TexReg 2241), the department removed restrictions on offering vehicle inspections in conjunction with other products and services and related advertisements. The purpose was intended to allow cost saving promotions encouraging inspections during the mid-month prior to the first-week bottleneck after inspection certificates expired. However, based on vehicle owner complaints and subsequent investigations of those complaints, the department has determined that some vehicle owners have unknowingly paid for additional and unsolicited services in conjunction with the required inspection. The adoption of amendments to the section will clarify that additional services must not be related to an item of inspection; must not be required as a prerequisite for obtaining an inspection; and any advertisement must clearly state such.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §§548.301(b-1), 548.501, and 548.505, which authorizes the commission to establish a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact, allows the department to collect advance payments for certificates, and allows the department to establish a maximum emissions-related inspection fee, respectively.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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37 TAC §23.80

The Texas Department of Public Safety adopts amendments to §23.80, concerning Out-of-State Vehicle Identification Number Verification, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1595).

The main purpose of §23.80 is to provide procedures for the Vehicle Identification Number (VIN) verification performed during the first-time state inspection for out-of-state vehicles.

Texas Transportation Code, §548.256, as amended by Senate Bill 5, Acts 2001, 77th Legislature, Regular Session, Chapter 967, Section 9, added subsections (c) and (d) effective until August 31, 2008. The department previously adopted amendments to §23.80, as published in the October 26, 2001, issue of the *Texas Register* (26 TexReg 8547) to effect these legislative changes. The amendments required inspection stations to collect $225.00, retaining $5.00 to cover their administrative costs, for the VIN verification as required by the statute. In a final judgment order for case number 102585, dated June 6, 2002, the 200th District Court, Travis County, held that Section 9 of Texas Senate Bill 5, as it amended Texas Transportation Code, §548.25(c) and (d) was unconstitutional.

Amendments to §23.80 are necessary in order to formalize the department's procedures in response to the court order and clarify issues concerning the VIN verification procedure.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which allows the Department of Public Safety to adopt rules to administer the compulsory inspection of vehicles; Texas Transportation Code, §548.256(a) and (b), which provides that the department prescribe and provide the form used for VIN verifications; and Texas Transportation Code, §548.501(a), that sets the fee for the verification form.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502080
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 13, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-2135

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SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.93

The Texas Department of Public Safety adopts amendments to §23.93, concerning Vehicle Emissions Inspections Requirements, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1597).

Amendments to the section are necessary in order to expand the vehicle emissions inspection program to Travis and Williamson counties as one of the measures of the Austin area Early Action Compact (EAC) clean air action plan, approved by the Texas Commission on Environmental Quality (TCEQ), in accordance with Senate Bill 1159, 78th Legislature, 2003. Effective September 1, 2005, department certified inspection stations in the two counties must perform on-board diagnostic (OBD) inspections and two-speed idle (TSI) inspections on vehicles subject to emissions testing during the annual safety inspection. In facilitating program operation, inspection stations in the two counties will be required to obtain emissions testing equipment certified by TCEQ. The department will also implement and administer programs for recognized repair facilities and technicians specializing in emissions repair in the two counties. Additional amendments prepare for the conditional suspension of the vehicle emissions inspection program in El Paso County in the event it is designated as reaching attainment, minor textual corrections, and reflect changes in statutes concerning registration.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.301(b-1), which authorizes the commission to adopt rules establishing a motor vehicle emissions inspection and maintenance program for vehicles subject to an early action compact.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502082
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 13, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-2135

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CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety adopts amendments to §27.1, concerning Right of Review, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1600).

Amendments to the section are necessary in order to set out the new location in Austin where an individual may personally appear to request the individual's criminal history record.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.086, which requires the Texas Department of Public Safety to adopt rules that provide for a uniform method of requesting criminal history record information from the department; and Texas Government Code, §411.083(b)(3), which requires the Texas Department of Public Safety to grant access to criminal history record information to the person who is the subject of the information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2005.

TRD-200502078
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 13, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-2135

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PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES
SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.87

The Texas Youth Commission (the commission) adopts an amendment to §91.87, concerning Suicide Alert Explanation of Terms, without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1904).

The justification for amending the section is the availability of accurate and current agency rules. The amended section contains a reference to the recently adopted §97.23, Physical Restraint, and uses terminology consistent with that section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502152
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: June 16, 2005
Proposal publication date: April 1, 2005
For further information, please call: (512) 424-6014

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CHAPTER 97. SECURITY AND CONTROL

The Texas Youth Commission (the commission) adopts amendments to §§97.1, 97.27, and 97.75 without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1905).

The justification for amending the sections is the availability of accurate and current agency rules. The amended sections will include a reference to the recently adopted §97.23, Physical Restraint. Sections 97.1 and 97.27 will no longer include references to repealed rules.

No comments were received regarding adoption of the amendments.

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.1, §97.27

The amendments are adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502153
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: June 16, 2005
Proposal publication date: April 1, 2005
For further information, please call: (512) 424-6014

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SUBCHAPTER B. PEACE OFFICERS

37 TAC §97.75

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502154
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: June 16, 2005
Proposal publication date: April 1, 2005
For further information, please call: (512) 424-6014

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CHAPTER 99. GENERAL PROVISIONS
SUBCHAPTER B. YOUTH FUNDS

37 TAC §99.31

The Texas Youth Commission (the commission) adopts an amendment to §99.31, concerning Youth Banking, without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1906).

The justification for amending the section is the availability of current agency rules. The amended section will allow 15 days from the date of deposit of a check into a youth's trust fund before the funds are available for use. A procedure will also be added for closing trust funds when youth are released from residential placements with the expectation that they will not be returning.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to

make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502155
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: June 16, 2005
Proposal publication date: April 1, 2005
For further information, please call: (512) 424-6014

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.59

The Texas Youth Commission (the commission) adopts an amendment to §99.59, concerning Transportation of Youth, without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1907).

The justification for amending the section is the availability of accurate and current agency rules. The amended section will include a reference to the recently adopted §97.23, Physical Restraint.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 27, 2005.

TRD-200502158
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: June 16, 2005
Proposal publication date: April 1, 2005
For further information, please call: (512) 424-6014

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PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. STANDARDS FOR SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.15

The Texas Juvenile Probation Commission adopts an amendment to §343.15 relating to the employment of certified detention officers. This section is adopted without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1602) and will not be republished.

TJPC adopts this rule in an effort to alleviate problems associated with employing certified officers who have been convicted of a Class B misdemeanor.

No public comment was received.

The amendment is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2005.

TRD-200502067
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: June 12, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-6710

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CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

SUBCHAPTER C. CERTIFICATION AND RECERTIFICATION

37 TAC §349.7, §349.10

The Texas Juvenile Probation Commission adopts amendments to §349.7 and §349.10, relating to the employment certification and recertification eligibility. Section 349.10 is adopted with nonsubstantive changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1602). Section 349.7 is adopted without changes and will not be republished.

TJPC adopts this rule in an effort to alleviate problems associated with employing certified officers who have been convicted of Class B misdemeanor.

No public comment was received.

The amendments are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the amendments.

§349.10. Recertification Eligibility.

(a) Basic Eligibility Requirements.

(1) In addition to the requirements in subsections (b) or (c) of this section, an applicant is eligible for recertification from the Commission if the applicant:

(A) does not have any of the following disqualifying criminal history:

(i) a felony conviction against the laws of this state, another state, or the United States within the past 10 years;

(ii) a deferred adjudication for a felony against the laws of this state, another state, or the United States within the past 10 years;

(iii) current felony probation or parole;

(iv) a jailable misdemeanor conviction against the laws of this state, another state or the United States within the past 5 years;

(v) a deferred adjudication for a jailable misdemeanor against the laws of this state, another state, or the United States within the past 5 years;

(vi) current misdemeanor probation or parole; or

(vii) registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

(B) is not currently under an order of suspension issued under §349.27(d)(2) or §349.31 of this chapter; and

(C) has never had any type of certification revoked from the Commission under §349.27(d)(3) of this chapter.

(2) A request for waiver or variance may not be requested for any disqualifying criminal history under paragraph (1)(A) of this subsection involving any Class A misdemeanor or felony unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by either the trial or an appellate court.

(b) Probation Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a probation officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the chief administrative officer, 20 hours of the required recertification training shall be in management and supervisory skills.

(c) Detention Officer. In addition to meeting the requirements under subsection (a) of this section, an applicant is eligible for recertification as a detention officer if the applicant:

(1) has completed 80 hours of recertification training in accordance with §349.15(d) of this chapter within the two years following the date of the certification's or recertification's approval; and

(2) if the person applying for recertification is the facility administrator, 20 hours of the required recertification training shall be in management and supervisory skills.

(3) has current certifications in:

(A) Cardiopulmonary Resuscitation (CPR);

(B) First Aid; and

(C) an approved physical restraint technique as defined by §343.60(1) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2005.

TRD-200502068
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: June 12, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-6710

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CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES SUBCHAPTER C. SHORT-TERM JUVENILE DETENTION OFFICERS

37 TAC §351.30

The Texas Juvenile Probation Commission adopts an amendment to §351.30, relating to the employment of short-term juvenile detention officers without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1603) and will not be republished.

TJPC adopts this rule in an effort to alleviate problems associated with employing certified officers who have been convicted of a Class B misdemeanor.

No public comment was received.

The amendment is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2005.

TRD-200502069
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: June 12, 2005
Proposal publication date: March 18, 2005
For further information, please call: (512) 424-6710

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas State Board of Podiatric Medical Examiners

Title 22, Part 18

In accordance with 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas State Board of Podiatric Medical Examiners will review the following rules for re-adoption, repeal or amendment beginning immediately. The rules to be reviewed are located at 22 Texas Administrative Code Chapter 371, Examinations; Chapter 373, Identification of Practice; Chapter 375, Rules Governing Conduct; Chapter 376, Violations and Penalties; Chapter 377, Procedures Governing Grievances, Hearings, and Appeals; Chapter 378, Continuing Education; Chapter 379, Fees and License Renewal; Chapter 380, Hyperbaric Oxygen Guidelines; Chapter 381, Relative Analgesia; Chapter 382, Podiatric Medical Technicians; Chapter 383, Sexual Misconduct; and Chapter 390, Procedures for the Negotiation and Mediation of Certain Breach of Contract Claims Asserted by Contractors Against the State of Texas.

The Board will consider comments received in response to this notice at its next meeting following the publication of this notice. Changes to the rules proposed by the Board after considering comments received in response to this notice will appear in the "Rules Proposed" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Tex. Gov't Code Ann. Ch. 2001. Comments must be received no later than July 10th, 2005.

Comments of the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, 333 Guadalupe, Suite 2-320, Austin, Texas 78701 or e-mail to Janie.Alonzo@foot.state.tx.us

TRD-200502115
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Filed: May 25, 2005

♦ ♦ ♦

Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this Notice of Readoption of rule 31 TAC, Chapter 15, relating to Coastal Area Planning, §§15.1 - 15.10, 15.12, 15.21 - 15.36, 15.41 - 15.44, and 15.51 - 15.54. This readoption of Chapter 15 is filed in accordance with the General Land Office's Intention to Review published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11469).

The GLO has assessed whether the reasons for readopting 31 TAC, Chapter 15, §§15.1 - 15.10, 15.12, 15.21 - 15.36, 15.41 - 15.44, and 15.51 - 15.54 continue to exist. The GLO finds that the rules in Chapter 15 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 15 relating to Coastal Area Planning in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 15 was adopted under authority granted to the commissioner of the GLO in §§31.051, 33.602, and 61.011(d), Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 15, Coastal Area Planning.

TRD-200502123
Trace Finley
Policy Director
General Land Office
Filed: May 25, 2005

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The General Land Office (GLO), with the approval of the School Land Board (SLB) files this Notice of Readoption of rule 31 TAC, Chapter 16, relating to Coastal Protection, §§16.1 - 16.4. This readoption of Chapter 16 is filed in accordance with the General Land Office's Intention to Review published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11469).

The GLO has assessed whether the reasons for readopting 31 TAC, Chapter 16, §§16.1 - 16.4 continue to exist. The GLO finds that the rules in Chapter 16 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 16 relating to Coastal Protection in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 16 was adopted under authority granted to the commissioner of the GLO and SLB in §31.051 and §33.064, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 16, Coastal Protection.

TRD-200502124

Trace Finley
Policy Director
General Land Office
Filed: May 25, 2005

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The General Land Office (GLO) files this Notice of Readoption of rule 31 TAC, Chapter 25, relating to Beach Cleaning and Maintenance Assistance Program, §§25.1 - 25.22. This readoption of Chapter 25 is filed in accordance with the General Land Office's Intention to Review published in the December 10, 2004, issue of the *Texas Register* (29 TexReg 11469).

The GLO has assessed whether the reasons for readopting 31 TAC, Chapter 25, §§25.1 - 25.22 continue to exist. The GLO finds that the rules in Chapter 25 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 25 relating to Beach Cleaning and Maintenance Assistance Program in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 25 was adopted under authority granted to the commissioner of the GLO in §61.067, Texas Natural Resources Code, to adopt rules necessary to perform its duties.

This concludes the review of Chapter 25, Beach Cleaning and Maintenance Assistance Program.

TRD-200502125
Trace Finley
Policy Director
General Land Office
Filed: May 25, 2005

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Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the review of Title 13 TAC, Part 1, Chapter 8, concerning the TexShare Library Consortium, in accordance with the requirements of Government Code, §2001.39. Notice of the review was published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1645). No comments were received during the comment period.

The commission finds that the reasons for the adoption of the rules in Title 13, Chapter 8, continue to exist. The rules are necessary to carry out the statutory obligations of the Texas State Library and Archives Commission for the establishment and maintenance of the TexShare consortium as a resource-sharing consortium for libraries at institutions of higher education, for public libraries, and for libraries of nonprofit corporations.

The rules in Chapter 8 are readopted in accordance with the Texas Government Code, §2001.039, and under authority of the Texas Government Code, §441.225, which permits the commission to adopt rules to govern the operation of the consortium.

The rules affect the Texas Government Code, Chapter 441, Subchapter M.

TRD-200502174
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: May 31, 2005

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School Land Board

Title 31, Part 4

The School Land Board (SLB) files this Notice of Readoption of rule 31 TAC, Chapter 151, relating to Operations of the School Land Board, §§151.1 - 151.4. This readoption of Chapter 151 is filed in accordance with the School Land Board's Intention to Review published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1476).

The SLB has assessed whether the reasons for readopting 31 TAC, Chapter 151, §§151.1 - 151.4 continue to exist. The SLB finds that the rules in Chapter 151 reflect current procedures of the SLB. The reasons for initially adopting the rules continue to exist. The SLB, therefore, readopts Chapter 151 relating to Operations of the School Land Board in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 151 was adopted under authority granted to the School Land Board in §32.062 and §33.064, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 151, Operations of the School Land Board.

TRD-200502126
Trace Finley
Policy Director
School Land Board
Filed: May 25, 2005

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The School Land Board (SLB) files this Notice of Readoption of rule 31 TAC, Chapter 154, relating to Land Sales, Acquisitions, and Trades, §§154.1, 154.11 and 154.21. This readoption of Chapter 154 is filed in accordance with the School Land Board's Intention to Review published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1476).

The SLB has assessed whether the reasons for readopting 31 TAC, Chapter 154, §§154.1, 154.11 and 154.21 continue to exist. The SLB finds that the rules in Chapter 154 reflect current procedures of the SLB. The reasons for initially adopting the rules continue to exist. The SLB, therefore, readopts Chapter 154 relating to Land Sales, Acquisitions, and Trades in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 154 was adopted under authority granted to the School Land Board in §32.062 and §33.064, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 154, Land Sales, Acquisitions, and Trades.

TRD-200502127
Trace Finley
Policy Director
School Land Board
Filed: May 25, 2005

♦ ♦ ♦

The School Land Board (SLB) files this Notice of Readoption of rule 31 TAC, Chapter 155, relating to Land Resources, §§155.1 - 155.9, 155.11, 155.15, 155.21 - 155.24 and 155.40 - 155.49. This readoption of Chapter 155 is filed in accordance with the School Land Board's Intention to Review published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 733).

The SLB has assessed whether the reasons for readopting 31 TAC, Chapter 155, §§155.1 - 155.9, 155.11, 155.15, 155.21 - 155.24 and 155.40 - 155.49 continue to exist. The SLB finds that the rules in Chapter 155 reflect current procedures of the SLB. The reasons for initially adopting the rules continue to exist. The SLB, therefore, readopts Chapter 155 relating to Land Resources in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 155 was adopted under authority granted to the School Land Board in §32.062 and §33.064, Texas Natural Resources Code, to adopt rules consistent with law.

This concludes the review of Chapter 155, Land Resources.

TRD-200502128
Trace Finley
Policy Director
School Land Board
Filed: May 25, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 30 TAC Chapter 113 - Preamble

40 CFR Part 63 Subpart (Chapter 113, Section)	Section Title	Original Incorporation (Commission Adoption)
A (§113.100)	General Provisions	June 25, 1997
F (§113.110)	Synthetic Organic Chemical Manufacturing Industry	June 25, 1997
G (§113.120)	Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater	June 25, 1997
H (§113.130)	Organic Hazardous Air Pollutants for Equipment Leaks	June 25, 1997
I (§113.140)	Certain Processes Subject to the Negotiated Regulations for Equipment Leaks	June 25, 1997
L (§113.170)	Coke Oven Batteries	July 14, 1999
M (§113.180)	Perchloroethylene Dry Cleaning Facilities	October 15, 1997
N (§113.190)	Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks	October 15, 1997
O (§113.200)	Ethylene Oxide Emissions Standards for Sterilization Facilities	October 15, 1997
Q (§113.220)	Industrial Process Cooling Towers	June 25, 1997
R (§113.230)	Gasoline Distribution Facilities	June 25, 1997
S (§113.240)	Pulp and Paper Industry	July 14, 1999
T (§113.250)	Halogenated Solvent Cleaning	June 25, 1997
U (§113.260)	Group I Polymers and Resins	October 7, 1998
W (§113.280)	Epoxy Resins Production and Non-Nylon Polyamides Production	October 15, 1997
X (§113.290)	Secondary Lead Smelting	June 25, 1997
Y (§113.300)	Marine Vessel Loading	June 25, 1997
AA (§113.320)	Phosphoric Acid Manufacturing Plants	June 14, 2000
BB (§113.330)	Phosphate Fertilizers Production Plants	June 14, 2000
CC (§113.340)	Petroleum Refineries	October 15, 1997

40 CFR Part 63 Subpart (Chapter 113, Section)	Section Title	Original Incorporation (Commission Adoption)
DD (§113.350)	Off-Site Waste and Recovery Operations	October 7, 1998
EE (§113.360)	Magnetic Tape Manufacturing Operations	June 25, 2997
GG (§113.380)	Aerospace Manufacturing and Rework Facilities	October 15, 1997
HH (§113.390)	Oil and Natural Gas Production Facilities	June 14, 2000
II (§113.400)	Shipbuilding and Ship Repair (Surface Coating)	October 7, 1998
JJ (§113.410)	Wood Furniture Manufacturing Operations	July 14, 1999
KK (§113.420)	Printing and Publishing	October 7, 1998
LL (§113.430)	Primary Aluminum Reduction Plants	July 14, 1999
MM (§113.440)	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills	June 18, 2003
OO (§113.460)	Tanks Level 1	July 14, 1999
PP (§113.470)	Containers	July 14, 1999
QQ (§113.480)	Surface Impoundments	July 14, 1999
RR (§113.490)	Individual Drain Systems	July 14, 1999
VV (§113.530)	Oil Water Separators and Organic-Water Separators	July 15, 1999
CCC (§113.600)	Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants	June 14, 2000
DDD (§113.610)	Mineral Wool Production	June 14, 2000
EEE (§113.620)	Hazardous Waste Combustors	July 14, 1999
GGG (§113.640)	Pharmaceuticals Production	July 14, 1999
HHH (§113.650)	Natural Gas Transmission and Storage Facilities	June 14, 2000
III (§113.660)	Flexible Polyurethane Foam Production	July 14, 1999
JJJ (§113.670)	Group IV Polymers and Resins	October 7, 1998
LLL (§113.690)	Portland Cement Manufacturing Industry	June 14, 2000
MMM (§113.700)	Pesticide Active Ingredient Production	June 14, 2000
NNN (§113.710)	Wool Fiberglass Manufacturing	June 14, 2000

40 CFR Part 63 Subpart (Chapter 113, Section)	Section Title	Original Incorporation (Commission Adoption)
OOO (§113.720)	Manufacture of Amino/Phenolic Resins	June 14, 2000
PPP (§113.730)	Polyether Polyols Production	June 14, 2000
RRR (§113.750)	Secondary Aluminum Production	June 18, 2003
TTT (§113.770)	Primary Lead Smelting	June 14, 2000
VVV (§113.790)	Publicly Owned Treatment Works	June 14, 2000
XXX (§113.810)	Ferroalloys Production: Ferromanganese and Silicomanganese	June 14, 2000

Figure 2: 30 TAC Chapter 113 - Preamble

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
B (§113.105)	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act, Section 112(j)
C (§113.106)	List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List
EEEE (§113.880)	Organic Liquids Distribution (Non-Gasoline)
FFFF (§113.890)	Miscellaneous Organic Chemical Manufacturing
IIII (§113.920)	Surface Coating of Automobiles and Light-Duty Trucks
KKKK (§113.940)	Surface Coating of Metal Cans
MMMM (§113.960)	Surface Coating of Miscellaneous Metal Parts and Products
OOOO (§113.980)	Printing, Coating, and Dyeing of Fabrics and Other Textiles
PPPP (§113.990)	Surface Coating of Plastic Parts and Products
QQQQ (§113.1000)	Surface Coating of Wood Building Products
RRRR (§113.1010)	Surface Coating of Metal Furniture
WWWW (§113.1060)	Reinforced Plastic Composites Production
YYYY (§113.1080)	Stationary Combustion Turbines
ZZZZ (§113.1090)	Stationary Reciprocating Internal Combustion Engines
AAAAA (§113.1100)	Lime Manufacturing Plants
BBBBB (§113.1110)	Semiconductor Manufacturing
CCCCC (§113.1120)	Coke Ovens: Pushing, Quenching, and Battery Stacks
EEEEE (§113.1140)	Iron and Steel Foundries
FFFFF (§113.1150)	Integrated Iron and Steel Manufacturing Facilities
GGGGG (§113.1160)	Site Remediation
HHHHH (§113.1170)	Miscellaneous Coating Manufacturing
IIIII (§113.1180)	Mercury Emissions from Mercury Cell Chlor-Alkali Plants
JJJJJ (§113.1190)	Brick and Structural Clay Products Manufacturing

40 CFR Part 63 Subpart (Chapter 113 Section)	Section Title
KKKKK (§113.1200)	Clay Ceramics Manufacturing
LLLLL (§113.1210)	Asphalt Processing and Asphalt Roofing Manufacturing
MMMMM (§113.1220)	Flexible Polyurethane Foam Fabrication Operations
NNNNN (§113.1230)	Hydrochloric Acid Production
PPPPP (§113.1250)	Engine Test Cells/Stands
RRRRR (§113.1270)	Taconite Iron Ore Processing
SSSSS (§113.1280)	Refractory Products Manufacturing
TTTTT (§113.1290)	Primary Magnesium Refining

Figure: 30 TAC §116.12(11)(A)

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT designation[1]	MAJOR SOURCE tons/year	MAJOR MODIFICATION[2] tons/year	OFFSET RATIO minimum
OZONE (VOC, NOx)[3, 6]			
I marginal[7]	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1[4]
II serious	50	50	1.00 to 1[4]
SO_2	100	40	1.00 to 1[4]
PM_{10}			
I moderate	100	15	1.00 to 1[4]
II serious	70	15	1.00 to 1[4]
NO_x[5]	100	40	1.00 to 1[4]
Lead	100	0.6	1.00 to 1[4]

[1] Texas nonattainment area designations are specified in 40 Code of Federal Regulations §81.344.

[2] The major modification threshold is applicable only to existing major sources and shall be evaluated after netting, unless the applicant chooses to apply nonattainment new source review (NNSR) directly to the project. The appropriate netting triggers for existing major sources of NO_x and VOC are specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas) and for other pollutants are equal to the major modification level listed in this table.

[3] VOC and NO_x are precursors to ozone formation and should be quantified individually to determine whether a source is subject to NNSR under §116.150 of this title. As specified in §116.150 of this title, for El Paso County, the NNSR rules apply to sources of VOC, but not to sources of NO_x.

[4] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compounds

NO_x = oxides of nitrogen

NO_2 = nitrogen dioxide

CO = carbon monoxide

SO_2 = sulfur dioxide

PM_{10} = particulate matter with an aerodynamic diameter less than or equal to ten microns

[5] Applies to the NAAQS for nitrogen dioxide (NO_2).

[6] For the Houston-Galveston-Brazoria, Dallas-Fort Worth, and Beaumont-Port Arthur eight-hour ozone nonattainment areas, if the United States Environmental Protection Agency promulgates rules requiring new source review permit applications in these areas to be evaluated for NNSR according to that area's one-hour standard classification, each application will be evaluated according to that area's one-hour standard classification. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

[7] For areas designated as nonattainment for ozone under Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), each application will be evaluated as if that area was designated as Marginal. Evaluation includes both the threshold for determining if there is a major modification as well as the ratio of offsets required along with any other applicable requirement that depends upon an area's nonattainment classification.

File Requirements:

ASCII text file.
All records are a fixed length with one record per line.
No specific order is required with the exception of the Header Record which must occur first and the Trailer Record which must occur last
All alphabetic fields must be UPPERCASE.
Filename is SRSTJPCX.??? Where ??? is the department's 3-digit headquarter county number.
The extracted file should be compressed and encrypted using public key encryption technology then transmitted to TJPC's FTP server.
Contact TJPC's MIS Division for the necessary encryption software (provided by TJPC) and instructions.

Reporting Requirements:

Reports are due to TJPC on or before the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10). Multiple report periods may be included as a single submission with the following stipulations:

Report period must be for compete months.

Report period cannot specify a report period which ends prior to a previously reported period. For example, if the last reported period was May, a subsequent submission for Feb-Apr would be rejected. The subsequent submission should be for Feb-May. This provision prevents more recent information from being overwritten.

Records are submitted based on activity (last changed) date (i.e. all records added or changed during the reporting period should be included).

To ensure complete information the following rules apply when submitting records:

Record Type	Description/Purpose	Submission Interval	Dependent Records Required
Header	Identifies submitting county, reporting period, processing date and CASEWORKER specific information.	Every submission. One per file. Must be first record.	Not Applicable
Trailer	Identifies the end of file and verifies that all records were received.	Every submission. One per file. Must be last record.	Not Applicable
Delete	Deletes a previously reported record.	As needed. This option should only be used to remove a record reported in error. Delete records should not be sent for sealed or purged records.	Not Applicable
Decode	Reports department-defined codes and their descriptions.	When added or changed. May be submitted in every submission. One record for each Decode Key (code) within each required Decode Type.	Not Applicable
Child	Reports the child's demographic information.	When added or changed. Dependent record submission may also require Child to be submitted.	Not Applicable
Referral	Reports intake and disposition information on each referral.	Record should be submitted upon completion of intake and again upon completion of disposition. Dependent record submission may also require Referral to be submitted.	Child
Detention	Reports information on secure detention events.	Record should be submitted upon entrance and again upon exit.	Child, Referral
MAYSI	Reports the scoring summary from the Massachusetts Youth Screening Instrument (version 2). An alternative reporting method using *Microsoft Access* is available from TJPC.	Record should be submitted upon completion of disposition for all Formal and Paper Formalized referrals.	Child, Referral
Mental Health	Reports date, provider and outcome each time a child is referred to a mental health provider.	When added or changed.	Child
Offense	Reports information about each offense for which a child is charged, within a designated referral.	When added or changed.	Child, Referral
Placement	Reports information about each out of home placement excluding TYC commitment and placement with relatives.	Record should be submitted upon entrance and again upon exit.	Child, Referral
Program	Reports program name, type, period and outcome each time a child is placed in a program.	Record should be submitted when added and again upon exit.	Child, Referral
Supervision	Reports supervision type, period and outcome each time a child is placed on supervision.	Record should be submitted upon entrance and again upon exit.	Child, Referral

NOTE: Editing will be done to ensure dependent records are contained within the current submission.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Header	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Header	FILLER		alphanumeric	14		4	17	Blank fill	
Header	Record Type	Record identifier for Header Record.	alphanumeric	2		18	19	Blank fill	
Header	Report Period Begin Date	Should specify the first day of the reporting period.	numeric	8	YYYYMMDD	20	27	Must be a valid date and specify the first day of a month.	
Header	Report Period End Date	Should specify the last day of the reporting period. A multi-month period may be specified.	numeric	8	YYYYMMDD	28	35	Must be a valid date and specify the last day of the reporting period. Must be greater than or equal to the Report Period Begin Date.	
Header	Users Initials	User generating this extraction process.	alphanumeric	3	left-justify, blank fill	36	38	Blank fill	CASEWORKER departments only
Header	CASEWORKER Program Release Number	Used to determine revision of CASEWORKER that created the extracted information.	alphanumeric	8	left-justify, blank fill	39	46	Blank fill	CASEWORKER departments only
Header	Unique Run ID	Date and time of extraction process.	alphanumeric	14	YYYYMMDDHHMMSS	47	60		
Header	Additional Email Address	Specify an additional email address (if any) where the processing log should be sent. The log will automatically be sent to the CJPC's address; this field is to be used only if your department desires a second copy.	alphanumeric	100	left-justify, blank fill	61	160	Blank fill	
Header	Date of Last Comprehensive Folder Edit (CFE)	Information extracted from CASEWORKER systems regarding the status of their last Comprehensive Folder Edit. Used by TJPC to determine future training issues.	numeric	8	YYYYMMDD	161	168	Zero fill	CASEWORKER departments only
Header	Number of Errors on Last CFE		numeric	5	99999	169	173	Zero fill	CASEWORKER departments only
Header	Number of Warnings on Last CFE		numeric	5	99999	174	178	Zero fill	CASEWORKER departments only
Header	Individual error/warning numbers from last CFE.		numeric	205		179	383	Zero fill	CASEWORKER departments only
Header	End of Record Marker		alphanumeric	1		384	384	Must contain "|"	

Decode	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Decode	FILLER		alphanumeric	14		4	17	Blank fill	
Decode	Record Type	Record identifier for Decode Record.	alphanumeric	2		18	19	"00"	
Decode	Decode Type	Specifies the category of the following key (code).	alphanumeric	4	left-justify, blank fill	20	23	DFAC-Detention Facilities DISP-Dispositions PFAC-Placement Facilities PGMT-Programs	
Decode	Decode Key (code)	Key (code) used by department for specified Decode Type (category).	alphanumeric	10	left-justify, blank fill	24	33	Not blank	
Decode	Decode Description	Informative description of the Decode Key (code).	alphanumeric	40	left-justify, blank fill	34	73	Not blank	
Decode	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	74	109	Blank fill	CASEWORKER departments only
Decode	End of Record Marker		alphanumeric	1		110	110	Must contain "|"	

Child	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Child	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	0000001..9999999	
Child	FILLER		numeric	7	9999999	11	17	Zero fill	
Child	Record Type	Record identifier for Child Record.	alphanumeric	2		18	19	"01"	
Child	Child's Last Name	The child's last name.	alphanumeric	35	left-justify, blank fill	20	54	Not blank	
Child	Child's First Name	The child's first name.	alphanumeric	35	left-justify, blank fill	55	89	Not blank	
Child	Child's Middle Name	The child's middle name.	alphanumeric	35	left-justify, blank fill	90	124		
Child	Child's Name Suffix	The child's name suffix.	alphanumeric	3	left-justify, blank fill	125	127		
Child	Race	The child's race/ethnicity.	alphanumeric	1		126	126	A-Asian B-African American H-Hispanic I-American Indian O-Other U-Unknown W-White	Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.
Child	Sex	The child's gender.	alphanumeric	1		129	129	M-Male F-Female U-Unknown	Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.
Child	Date of Birth	The child's date of birth.	numeric	8	YYYYMMDD	130	137	Valid date between 1/1/1900 and 12/31/2099	
Child	Social Security Number	The child's social security number.	numeric	9	999999999	138	146	000000000..999999999	
Child	Zip Code	Zip code of the child's residence.	numeric	9	999999999	147	155	000000000..999999999 5-digit zip code is acceptable with trailing zeros.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Child	Child Lives With	Specifies the person(s) with whom the child lives. If the makeup of the child's household differs from the options provided, list the principal caretaker.	alphanumeric	4	left-justify, blank fill	156	159	BOTH-Two parents (natural or adoptive) BLEN-combination of two parents (natural and step or adoptive and step) FATH-Father (natural, adoptive or step) MOTH-Mother (natural, adoptive or step) GPAR-Grandparent(s) GARD-Legal guardian (non-family) RELA-Other relative(s) FOST-Foster family GRUP-Group home or institution that provides 24 hour care SELF-Child lives alone SPOU-Spouse (child's legal or common-law) FRND-Friend (peer, adult friend, or boyfriend/girlfriend) OTHR-Other UNKN-Unknown	
Child	Special Education?	Has the child been identified as a special education student?	alphanumeric	1		160	160	Y, N or U	
Child	Special Education Handicapping Condition	If the child has been identified as a special education student, specify the primary handicapping condition.	alphanumeric	2	left-justify, blank fill	161	162	ED-Emotionally Disturbed LD-Learning Disabled MR-Mentally Retarded PD-Physical Disability UN-Unknown	Required if the Special Education field is 'Y', otherwise blank fill.
Child	Mental Health Needs	Does the child have mental health needs?	alphanumeric	1	left-justify, blank fill	163	163	Y, N or U	
Child	Date Determined Mentally Ill	Date that the child was first determined to have mental health needs (by the department).	numeric	8	YYYYMMDD	164	171	Valid date between 1/1/1900 and 12/31/2099	Required if the Mental Health Needs field is 'Y'. Otherwise zero fill.
Child	In Treatment?	Is the child currently in mental health treatment?	alphanumeric	1		172	172	Y, N, U or blank fill if not applicable.	Required if the Mental Health Needs field is 'Y'. Otherwise blank fill.
Child	Diagnosis	What is the child's primary diagnosed mental health condition?	alphanumeric	2		173	174	AJ-Adjustment Disorder AD-Attention Deficit Hyperactivity Disorder BP-Bipolar CD-Conduct Disorder CG-Cognitive Disorder DA-Dissociative Disorder DD-Disruptive Disorder DF-Oppositional Defiant Disorder DN-Depression Not Otherwise Specified ED-Eating Disorder GA-Generalized Anxiety IC-Impulse Control Disorder MD-Major Depression MR-Mental Retardation OA-Other Anxiety Disorder OC-Other Childhood Disorder OM-Other Mood Disorder OP-Other Psychotic Disorder OT-Other Disorder PD-Personality Disorder PS-Post Traumatic Stress Disorder PV-Pervasive Developmental Disorder SA-Schizoaffective SZ-Schizophrenia UN-Unknown Blank fill if not applicable.	Required if the Mental Health Needs field is 'Y'. Otherwise blank fill.
Child	Gang Affiliation/Membership	Is the juvenile currently or has the juvenile ever been affiliated with a gang or a member of a gang?	alphanumeric	1		175	175	Y, N, S (suspected), or U	
Child	Sexual Abuse?	Has the child ever been a victim of sexual abuse?	alphanumeric	1		176	176	Y, N, S (suspected), or U	
Child	Physical Abuse?	Has the child ever been a victim of physical abuse?	alphanumeric	1		177	177	Y, N, S (suspected), or U	
Child	Emotional Abuse?	Has the child ever been a victim of emotional abuse?	alphanumeric	1		178	178	Y, N, S (suspected), or U	
Child	DPS SID Number	The child's State Identification Number (SID) as issued by the Department of Public Safety	alphanumeric	8	99999999	179	186	00000000..99999999 or blank fill	
Child	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	187	222	Blank fill	CASEWORKER departments only
Child	End of Record Marker		alphanumeric	1		223	223	Must contain "|"	

Referral	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Referral	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	0000001..9999999	
Referral	Referral Number	Unique referral identifier.	numeric	7	9999999	11	17	0000000..9999999	
Referral	Record Type	Record identifier for Referral Record.	alphanumeric	2		18	19	"03"	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Referral Type	Type of referral. Definitions of these categories are available on the TJPC website.	alphanumeric	2		20	21	FM-Formal PF-Paper Formalized PA-Paper Complaint CS-Interim (Courtesy) Supervision TR-Permanent Supervision (Transfer) CI-Crisis Intervention CD-Contract Detention CP-Contract Placement NJ-Non-Jurisdiction	
Referral	Referral Date	For formal, paper formalized and crisis intervention referral types, the referral date is when face-to-face contact with the child occurs. For paper complaints, it is the date that the department received the complaint. For non-jurisdictional, contract placements and detentions, interim and permanent supervisions types, it is the date the child was received.	numeric	8	YYYYMMDD	22	29	Valid date between 1/1/1900 and 12/31/2099.	
Referral	County Number	County referring the child. Same as Headquarter County Number unless referred to a multi-county jurisdiction. If Referral Type is Contract Detention, Contract Placement or Non-Jurisdiction, indicate the referring county (origin or use a special identifier (755-758) if applicable.	numeric	3	999	30	32	001..254 755-Other State 756-TYC 757-INS 758-Other U.S. Government Agency 759-State or Local Government Agency	County specified must be within the department's jurisdiction or special identifier (755-758).
Referral	School Status	School status at time of referral.	alphanumeric	2		33	34	IS-In Regular School DO-Dropped Out SE-Suspended/Expelled GD-GED GR-Graduated HS-Home School AE-Alternative Education JJ-Juvenile Justice Alternative Education Program UN-Unknown	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Last Grade Completed	The last grade completed by the child at time of referral.	numeric	2	99	35	36	00..12	Must be non-zero value if School Status is known.
Referral	Substance Abuse	Is the juvenile in need of substance abuse services?	alphanumeric	1		37	37	Y-Yes, not being treated T-Yes, being treated N-No S-Suspected U-Unknown	
Referral	Referral Source	The agency referring the child to the probation department.	alphanumeric	1		38	38	P-Law Enforcement Agency S-School D-Probation Department O-Other Blank fill if not applicable.	Required for all Formal and Paper Formalized referrals, otherwise blank fill.
Referral	Primary Alleged Offense	At intake, the most serious offense the child is alleged to have committed.	alphanumeric	8	99999999	39	46	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Alleged Offense Indicator field must contain 'P'.
Referral	Primary Alleged Offense Preparatory Code	Designates that the Primary Alleged Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		47	47	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Primary Disposition Offense Code	The most serious offense at disposition of the referral.	alphanumeric	8	99999999	48	55	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Disposition Indicator field must contain 'P'.
Referral	Primary Disposition Offense Preparatory Code	Designates that the Primary Disposition Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		56	56	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Primary Disposition	Department defined code for disposition.	alphanumeric	4	left-justify, blank fill	57	60	Department specified code.	Required if Disposition Date field completed. Must include a Decode Record for each code specified.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Primary Disposition (TJPC category)	Summarized category of Primary Disposition field as defined by TJPC. Definitions of these categories are available on the TJPC website.	numeric	3	999	61	63	Department Actions: 010-Dismissed or Withdrawn 020-Supervisory Caution 030-Deferred Prosecution Prosecutor Actions: 040-No Probable Cause/Dismissed 050-Refused 051-Non-Suited 060-Supervisory Caution 070-Deferred Prosecution Court Actions: 080-Dismissed 081-Not Guilty 082-Adjudicated with no Disposition 090-Supervisory Caution 100-Deferred Prosecution 110-Adjudicated to Probation 111-Determinate Sentence Probation 120-Modified/Extended Probation 130-Indeterminate Commitment to TYC 140-Determinate Commitment to TYC 150-Certified as an Adult 910-Consolidated and Disposed in Another Case 920-Transferred with no Disposition	Required if Disposition Date field completed.
Referral	Disposition Date	Date a disposition was assigned to this referral.	numeric	8	YYYYMMDD	64	71	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	
Referral	Determinate Sentence Months	The total number of months ordered if the child is either committed to the Texas Youth Commission or placed on probation for a determinate sentence.	numeric	3	999	72	74	001..999 or zero fill if not applicable.	Required if Primary Disposition value equals 140 or 111.
Referral	Diverted to Where	Designates the type of agency, organization or program (outside of the juvenile justice system) where the child was diverted. Do not complete this field for children who are under supervision, committed to TYC or certified as an adult. Definitions of these categories are available on the TJPC website.	alphanumeric	4	left-justify, blank fill	75	78	MHTH-Mental Health FCPS-Family/Child Protective Services DAC-Drug & Alcohol Counseling FOP-First Offender Program STAR-STAR/Prevention Program SCHL-School Resources TRUP-Truancy Program VICT-Victim Mediation OTHR-Other	
The following section provides for two subsequent dispositions. This section is used only for children who violate the terms of their deferred prosecution and are subsequently adjudicated on the same referral, or for dispositions that are appealed and are subsequently assigned a different disposition. It is not used for modifications. See descriptions and edit criteria above.									
Referral	Subsequent Primary Disposition	See descriptions above.	alphanumeric	4	left-justify, blank fill	79	82	See edit criteria above.	See dependencies above.
Referral	Subsequent Primary Disposition (TJPC category)		numeric	3	999	83	85		
Referral	Subsequent Disposition Date		numeric	8	YYYYMMDD	86	93		
Referral	Subsequent Determinate Sentence Months		numeric	3	999	94	96		
Referral	Subsequent Diverted to Where		alphanumeric	4	left-justify, blank fill	97	100		
Referral	Subsequent Primary Disposition	See descriptions above.	alphanumeric	4	left-justify, blank fill	101	104	See edit criteria above.	See dependencies above.
Referral	Subsequent Primary Disposition (TJPC category)		numeric	3	999	105	107		
Referral	Subsequent Disposition Date		numeric	8	YYYYMMDD	108	115		
Referral	Subsequent Determinate Sentence Months		numeric	3	999	116	118		
Referral	Subsequent Diverted to Where		alphanumeric	4	left-justify, blank fill	119	122		
End of subsequent disposition section.									
Referral	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	123	158	Blank fill	CASEWORKER departments only
Referral	End of Record Marker		alphanumeric	1		159	159	Must contain "|"	

Detention	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Detention	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Detention	Referral Number	Specifies the referral for which this secure detention applies.	numeric	7	9999999	11	17	0000001..9999999	
Detention	Record Type	Record identifier for Detention Record.	alphanumeric	2		18	19	"DN"	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Detention	Detention Sequence Number	Uniquely identifies this detention record from all other detention records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique detention event. Once assigned it should not be changed.
Detention	Detention Facility	TJPC registered facility identification number for secure detention facilities in Texas or department defined code for facilities outside of Texas.	alphanumeric	7	left-justify, blank fill	26	32	If facility is within Texas then code must be a TJPC registered facility identification code, otherwise a department specified code.	If facility is not in Texas then include a Decode Record for each code specified.
Detention	Date Detained	The date the child was placed in detention.	numeric	8	YYYYMMDD	33	40	Valid date between 1/1/1900 and 12/31/2099.	
Detention	Time Detained	The time the child was placed in detention.	numeric	4	HHMM	41	44	HH between 00..23 and MM between 00..59. 0000 is considered midnight.	
Detention	Date Released	The date the child was released from detention.	numeric	8	YYYYMMDD	45	52	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained. Zero fill if not applicable.	
Detention	Time Released	The time the child was released from detention.	numeric	4	HHMM	53	56	HH between 00..23 and MM between 00..59. 0000 is considered midnight.	Required if Date Released field completed.
Detention	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	57	92	Blank fill	CASEWORKER departments only
Detention	End of Record Marker		alphanumeric	1		93	93	Must contain "|"	

MAYSI	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
MAYSI	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
MAYSI	Referral Number	Specifies the referral for which this MAYSI screening applies.	numeric	7	9999999	11	17	0000001..9999999	
MAYSI	Record Type	Record identifier for MAYSI Record.	alphanumeric	2		18	19	"MA"	
MAYSI	MAYSI Sequence Number	Uniquely identifies this MAYSI record from all other MAYSI records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique MAYSI event. Once assigned it should not be changed.
MAYSI	Screening Date	Date the screening instrument was administered to the child for the specified referral. If the MAYSI was not administered, enter the date that the department attempted to administer the instrument. If the child was already in detention or in treatment, enter the referral date.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
MAYSI	Administered?	Was the MASYI-2 administered to the juvenile?	alphanumeric	1		34	34	Y or N	
MAYSI	Reason Not Administered	Why was the MAYSI-2 not administered?	alphanumeric	1		35	35	D-Child already in detention at time of referral E-Child is non-English speaking R-Child Refused Test T-Child is already in treatment for mental health U-Child is physically or mentally unable O-Other reason	Required if Administered value is "N". Blank fill if not applicable.
MAYSI	Alcohol/Drug Use (AD) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		36	36	0..8 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Angry-Irritable (AI) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		37	37	0..9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Depressed-Anxious (DA) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		38	38	0..9 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Somatic Complaints (SC) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		39	39	0..6 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Suicide Ideation (SI) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		40	40	0..5 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Thought Disturbance BOYS (TD) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		41	41	0..5 or blank fill if not applicable.	Required if Administered value is "Y" and Sex is "M". If Sex is "F", blank fill.
MAYSI	Traumatic Experiences (TE) Score	Refer to MAYSI-2 Scoring Summary.	alphanumeric	1		42	42	0..5 or blank fill if not applicable.	Required if Administered value is "Y".
MAYSI	Referred for Subsequent Assessment?	Was the child referred to a mental health professional for a subsequent assessment based on the MAYSI results?	alphanumeric	1		43	43	Y or N	
MAYSI	Referred to Where	If the child was referred for a subsequent assessment, to what type of provider was he/she referred?	alphanumeric	1		44	44	C-Contract Provider I-In-house Staff M-Local MHMR P-Private Provider O-Other	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	Subsequent Assessment?	Did the child receive a subsequent assessment by a mental heath professional?	alphanumeric	1		45	45	Y, N, U (unknown) or blank fill if not applicable.	Required if Referred for Subsequent Assessment value is "Y".
MAYSI	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	46	81	Blank fill	CASEWORKER departments only
MAYSI	End of Record Marker		alphanumeric	1		82	82	Must contain "|"	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Mental Health	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Mental Health	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Mental Health	Record Type	Record identifier for Mental Health Record.	alphanumeric	2		11	12	"MH"	
Mental Health	Mental Health Sequence Number	Uniquely identifies this mental health record from all other mental health records for the specified Personal ID Number.	numeric	6	999999	13	18	000001..999999	Used in conjunction with the PID Number to determine unique mental health event. Once assigned it should not be changed.
Mental Health	Mental Health Referral Date	The date that the child was referred to the mental health provider	numeric	8	YYYYMMDD	19	26	Valid date between 1/1/1900 and 12/31/2099.	
Mental Health	Referred For	For what was the child referred?	alphanumeric	1		27	27	A-Assessment C-Crisis Intervention E-Evaluation S-Service O-Other	
Mental Health	Referred To	To what type of provider was the child referred?	alphanumeric	1		28	28	C-Contract Provider I-In-house Staff M-Local MHMR P-Private Provider O-Other	
Mental Health	Referral Outcome	What was the outcome of this referral?	alphanumeric	1		29	29	C-Completed N-Not Completed U-Unknown Outcome	
Mental Health	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	30	65	Blank fill	CASEWORKER departments only
Mental Health	End of Record Marker		alphanumeric	1		66	66	Must contain '|'	

Offense	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Offense	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Offense	Referral Number	Specifies the referral for which this offense applies.	numeric	7	9999999	11	17	0000001..9999999	
Offense	Record Type	Record identifier for Offense Record.	alphanumeric	2		18	19	"OF"	
Offense	Unique Offense Number	Uniquely identifies this offense record from all other offense records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique offense event. Once assigned it should not be changed.
Offense	Alleged Offense Date	The date the alleged offense occurred.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
Offense	Alleged Offense Counts	Used to specify multiple occurrences (counts) of the same offense and incident.	numeric	2	99	34	35	01..99	
Offense	Alleged Offense Code	Used to designate the DPS offense code for the alleged offense.	alphanumeric	8	99999999	36	43	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	
Offense	Alleged Offense Preparatory Code	Used to designate the Alleged Offense was a preparatory offense.	alphanumeric	1		44	44	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Offense	Alleged Offense Indicator	Designates the status of the offense at time of intake. An offense may be designated as a primary or secondary offense. However, if during disposition the child is being disposed on an offense not originally listed, enter a new offense and designate it as 'added at disposition' or 'revised at disposition'.	alphanumeric	1		45	45	P-Primary alleged offense S-Secondary alleged offense R-Revised offense at time of disposition A-Added offense at time of disposition	Only one offense within a referral may be designated as the primary alleged offense.
Offense	Disposition Indicator	Designates the status of the offense at time of disposition.	alphanumeric	1		46	46	P-Primary disposition offense C-Consolidated with primary offense D-Dismissed (not included in the disposition)	Only one offense within a referral may be designated as the primary disposition offense.
Offense	Weapon Used	Specifies the type of weapon used during the commission of the offense.	alphanumeric	2		47	48	BK-Brass Knuckles CL-Club or other similar device EX-Explosives/Explosive Weapon HB-Hoax Bomb HG-Handgun KN-Knife MA -Mace or other chemical dispensing device RI-Rifle SG-Shotgun OT-Other Blank fill if not applicable.	
Offense	School Related Location	Specifies the offense occurred on a school campus or during a school related activity.	alphanumeric	4	left-justify, blank fill	49	52	OCAM-On Campus OTHR-School Related Activity-On/Off Campus Blank fill if not applicable.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Offense	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number where the offense took place. If the offense occurred 'in transit' then use the home campus number. May be obtained from the local campus, school district or Texas Education Agency (TEA).	numeric	9	999999999	53	61	000000000..999999999 or zero fill if not applicable.	Required if School Related Location field is "OCAM". Zero fill if not applicable.
Offense	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	62	97	Blank fill	CASEWORKER departments only
Offense	End of Record Marker		alphanumeric	1		98	98	Must contain '|'	

Placement	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Placement	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Placement	Referral Number	Specifies the referral for which this placement applies.	numeric	7	9999999	11	17	0000001..9999999	
Placement	Record Type	Record identifier for Placement Record.	alphanumeric	2		18	19	"PL"	
Placement	Placement Sequence Number	Uniquely identifies this placement record from all other placement records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique placement event. Once assigned it should not be changed.
Placement	Placement Facility	TJPC registered facility identification number or department defined code for placement facility.	alphanumeric	7	left-justify, blank fill	26	32	If Placement Type is Secure Correctional (S) then code must be a TJPC registered facility identification code.	If Placement Type is not Secure Correctional (S) then include a Decode Record for each code specified.
Placement	Placement Type	Type of residential placement used.	alphanumeric	1		33	33	E-Emergency Shelter F-Foster Care S-Secure Correctional R-Residential Treatment	
Placement	Service Type	Description of the primary service delivered at the facility.	alphanumeric	1		34	34	B-Bootcamp C-Correctional M-Mental Health S-Substance Abuse T-Treatment X-Sex Offender O-Other	Required if Placement Type field is not Emergency Shelter (E).
Placement	Cost Per Day	Specifies per day charge for this placement. Zero specifies a no-cost (free) placement. If the cost per day changes during the placement, create a new record.	numeric	5	999.99 (implied decimal)	35	39	$000.00..$500.00	
Placement	Level of Care	Level of care as defined by the Texas Department of Family Protective Services (FPS). Definitions of these categories are available on the TJPC website.	alphanumeric	1		40	40	B-Basic M-Moderate S-Specialized I-Intensive U-Unknown Blank fill if not applicable.	If the placement ended prior to 9/1/2003, then the old Levels of Care (1..6) should be used.
Placement	Placement Date In	The date the child entered the placement facility.	numeric	8	YYYYMMDD	41	48	Valid date between 1/1/1900 and 12/31/2099.	
Placement	Placement Date Out	The date the child exited the placement facility.	numeric	8	YYYYMMDD	49	56	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Placement Date In. Zero fill if not applicable.	
Placement	Discharge Reason	Specifies the reason the child left the facility. Definitions of these categories are available on the TJPC website.	alphanumeric	1		57	57	S-Completed B-Absent without Permission C-Changed Facilities/Cost Per Day Changed D-Deceased F-Depletion of Funds/Closure J-Transferred out of Jurisdiction U-Unsuitable/Not Eligible X-Failure to Comply	Required if Placement Date Out field completed. If 'C' is used a new Placement Record must exist.
Placement	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	58	93	Blank fill	CASEWORKER departments only
Placement	End of Record Marker		alphanumeric	1		94	94	Must contain '|'	

Program	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Program	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Program	Referral Number	Specifies the referral for which this program applies.	numeric	7	9999999	11	17	0000001..9999999	
Program	Record Type	Record identifier for Program Record.	alphanumeric	2		18	19	"PG"	
Program	Program Sequence Number	Uniquely identifies this program record from all other program records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique program event. Once assigned it should not be changed.
Program	Program Name	Department defined code for the program.	alphanumeric	4	left-justify, blank fill	26	29	Department specified code.	Must include a Decode Record for each code specified.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Program	Program Provider	Type of provider for program.	alphanumeric	1		30	30	C-Contract Provider I-In-house Staff M-Local MHMR P-Private Provider O-Other	
Program	Program Type	Summarizes the program into specific categories based on its primary purpose. Definitions of these categories are available on the TJPC website.	alphanumeric	3		31	33	ANG-Anger Management/Conflict Resolution BJP-Border Justice Project CNS-Counseling Services CSR-Community Service/Restitution DCT-Drug Court ERL-Early Intervention/First Referral EDU-Educational EXP-Experiential Education DAY-Extended Day Program/Day Boot Camp FAM-Family Preservation FEM-Female Offender GNG-Gang Prevention/Intervention ISP-Intensive Supervision LIF-Life Skills MEN-Mentor MTL-Mental Health MRT-Mental Retardation RUN-Runaway/Truancy SOF-Sex Offender SAP-Substance Abuse Prevention/Intervention SUT-Substance Abuse Treatment VMD-Victim Mediation VOC-Vocational/employment OTH-Other	
Program	Program Referral Date	The date that the child was referred to the program. (This is generally not the same date at the program begin date.)	numeric	8	YYYYMMDD	34	41	Valid date between 1/1/1900 and 12/31/2099.	
Program	Program Begin Date	The date the child physically began the program.	numeric	8	YYYYMMDD	42	49	Valid date between 1/1/1900 and 12/31/2099.	
Program	Program End Date	The date the child exited the program.	numeric	8	YYYYMMDD	50	57	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Program Begin Date. Zero fill if not applicable.	
Program	Program Outcome	Specifies the program outcome. Definitions of these categories are available on the TJPC website.	alphanumeric	1		58	58	S-Completed B-Absent without Permission D-Deceased F-Depletion of Funds/Closure J-Transferred out of Jurisdiction U-Unsuitable/Not Eligible X-Failure to Comply	Required if Program End Date field completed.
Program	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	59	94	Blank fill	CASEWORKER departments only
Program	End of Record Marker		alphanumeric	1		95	95	Must contain "|"	

Supervision	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Supervision	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	9999999	4	10	0000001..9999999	
Supervision	Referral Number	Specifies the referral for which this supervision applies.	numeric	7	9999999	11	17	0000001..9999999	
Supervision	Record Type	Record identifier for Supervision Record.	alphanumeric	2		18	19	"SV"	
Supervision	Supervision Sequence Number	Uniquely identifies this Supervision record from all other supervision records for the specified Personal ID Number.	numeric	6	999999	20	25	000001..999999	Used in conjunction with the PID Number and Referral Number to determine unique supervision event. Once assigned it should not be changed.
Supervision	Supervision Type	Specifies the type of supervision. Definitions of these categories are available on the TJPC website.	alphanumeric	4	left-justify, blank fill	26	29	PROB-Court Ordered Probation DEFP-Deferred Prosecution CREL-Conditional Release from Detention TEMP-Temporary Pre-Court Monitoring INDR-Indirect Supervision	
Supervision	Supervision Begin Date	The beginning date of the supervision.	numeric	8	YYYYMMDD	30	37	Valid date between 1/1/1900 and 12/31/2099.	
Supervision	Supervision Expected End Date	The date that the supervision is scheduled to end (based on a court order or department agreement).	numeric	8	YYYYMMDD	38	45	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date.	
Supervision	Supervision End Date	The ending date of the supervision.	numeric	8	YYYYMMDD	46	53	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date. Zero fill if not applicable.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Supervision	Supervision Outcome	Specifies the supervision outcome. Definitions of these categories are available on the TJPC website.	alphanumeric	1		54	54	S-Completed A-Transferred to the Adult System B-Absent without Permission D-Deceased J-Transferred out of Jurisdiction T-TYC Commitment X-Failure to Comply	Required if Supervision End Date field completed.
Supervision	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	55	90	Blank fill	CASEWORKER departments only
Supervision	End of Record Marker		alphanumeric	1		91	91	Must contain "|"	

Delete	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Delete	FILLER		alphanumeric	14		4	17	Blank fill	
Delete	Record Type	Record identifier for Delete Record.	alphanumeric	2		18	19	"XX"	
Delete	Delete Record Type	**A Delete Record should only be used to remove records reported in error. It should not be used to remove sealed or purged records.** A request to delete a Child Record will cause all records for the specified PID Number to be removed. A request to delete a Referral Record will cause all records attached to the referral (i.e. detentions, offenses, placements, etc) to be removed. All other delete requests will remove only the requested record.	alphanumeric	2		20	21	01-Child 03-Referral DN-Detention MA-MAYSI MH-Mental Health OF-Offense PL-Placement PG-Program SV-Supervision	
Delete	Delete Personal ID Number	Specifies the personal identification number of the record to be deleted.	numeric	7	9999999	22	28	0000001..9999999	Required for all delete transactions.
Delete	Delete Referral Number	Specifies the referral number of the record to be deleted.	numeric	7	9999999	29	35	0000001..9999999, zero fill if not applicable	Required for all delete transactions except '01'-Child and 'MH'-Mental Health.
Delete	Delete Sequence Number	Specifies the sequence number of the record to be deleted.	numeric	6	999999	36	41	000001..999999, zero fill if not applicable	Required for all delete transactions except '01'-Child and '03'-Referral.
Delete	CASEWORKER Record ID	Unique record identifier assigned by CASEWORKER.	alphanumeric	36	left-justify, blank fill	42	77	Blank fill	CASEWORKER departments only
Delete	End of Record Marker		alphanumeric	1		78	78	Must contain "|"	

Trailer	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Trailer	FILLER		alphanumeric	14		4	17	"ZZZZZZZZZZZZZZ"	Must be last record in the file.
Trailer	Record Type	Record identifier for Trailer Record.	alphanumeric	2		18	19	"ZZ"	
Trailer	Total Record Count	Total number of records contained in the file including the header and trailer.	numeric	8	99999999	20	27		Compared to calculated number of records to ensure complete file was transmitted.
Trailer	End of Record Marker		alphanumeric	1		28	28	Must contain "|"	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Crime Victim Services Division - Other Victim Assistance Grants Funding Notice

The Office of the Attorney General (OAG), Crime Victim Services Division (CVSD) is accepting applications for crime victim related programs under the Other Victim Assistance Grant (OVAG) Program. The grant term will be September 1, 2005 through August 31, 2006.

Letters of Intent to apply for this grant program are required. Applications will not be considered if a letter of intent is not submitted by the deadline. The letters of intent must be received no later than 5:00 p.m. on June 20, 2005. The letters of intent may be faxed, e-mailed, or mailed to the OAG.

Complete grant applications (including all required attachments) must be received by the OAG, CVSD via e-mail and hard copy no later than 5:00p.m. on July 8, 2005. One original complete grant application and three (3) complete hard copies must be mailed and one (1) copy must be e-mailed. A hard copy alone or an electronic copy alone will not be accepted as a complete application. Attachments or documents that have to be signed do not have to be e-mailed.

The address to mail the letter of intent and the complete application is Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Mail Code 005, Austin, Texas 78711-2548, Attn: GRANT APPLICATIONS. The fax number to fax the letter of intent is (512) 936-1650. The e-mail address to e-mail the letter of intent and the complete application is cvsgrants@oag.state.tx.us.

Eligible applicants include local units of government, non-profit agencies with a 26 USC sec. 501(c)(3) status, and state agencies. All organizations applying for this grant must have provided victim services for at least nine months prior to receiving a grant.

Eligible projects must include the main purpose area of providing direct victim services. More specific information regarding purpose areas can be found in the application kit.

Eligible cost categories include the following: (1) Salary; (2) Fringe Benefits; (3) Professional and Consultant Services; (4) Travel; (5) Equipment; (6) Supplies; and (7) Other Direct Operating Expenses.

Cash and/or in-kind match may be required for all applicants. Additional information is available in the grant application kit.

The minimum amount a local or statewide applicant may apply for is $20,000 for the grant term.

Rules for the Other Victim Assistance Grant Program can be found in Title 1 Texas Administrative Code, Part 3, Chapter 60 (Posted for Review and Comment). Availability of funds is subject to and based upon legislative appropriation. Funds shall be distributed on a competitive basis.

To obtain a grant application kit or for more information please go to the agency website at www.oag.state.tx.us or contact Melissa Foley at melissa.foley@oag.state.tx.us or (512) 463-0826.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502165
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 27, 2005

♦ ♦ ♦

Crime Victim Services Division - Sexual Assault Prevention and Crisis Services Program Funding Notice

The Office of the Attorney General (OAG), Crime Victim Services Division (CVSD) is accepting applications from sexual assault victim services programs under the Sexual Assault Prevention and Crisis Services (SAPCS) Program. The contract term will be September 1, 2005 through August 31, 2006.

Letters of Intent to apply for this grant program are required. Applications will not be considered if a letter of intent is not submitted by the deadline. The letters of intent must be received no later than 5:00 p.m. on June 20, 2005. The letters of intent may be faxed, e-mailed, or mailed to the OAG.

Complete grant applications (including all required attachments) must be received by the OAG, CVSD via e-mail and hard copy no later than 5:00p.m. on July 8, 2005. One original complete grant application and three (3) complete hard copies must be mailed and one (1) copy must be e-mailed. A hard copy alone or an electronic copy alone will not be accepted as a complete application. Attachments or documents that have to be signed do not have to be e-mailed.

The address to mail the letter of intent and the complete application is Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Mail Code 005, Austin, Texas 78711-2548, Attn: GRANT APPLICATIONS. The fax number to fax the letter of intent is (512) 936-1650. The e-mail address to e-mail the letter of intent and the complete application is cvsgrants@oag.state.tx.us.

Eligible applicants include (1) Local units of government, excluding law enforcement and prosecutors' offices; (2) non-profit agencies with 26 USC sec. 501(c)(3) status; and (3) state agencies (including universities). All organizations applying for this grant must also offer and maintain basic services for at least nine months prior to receiving a SAPCS contract, pursuant to Chapter 420, Texas Government Code. These basic services are listed in the application kit.

Eligible purpose areas include the following: (1) direct and support services to survivors of sexual assault and their families; (2) education and training about the nature, scope, and prevention of sexual assault to the public, professionals, students and volunteers; (3) activities and services to prevent sexual assault; or (4) other support for services to survivors and their families as determined by the OAG.

Eligible cost categories include the following: (1) Salary; (2) Fringe Benefits; (3) Professional and Consultant Services; (4) Travel; (5) Equipment; (6) Supplies; and (7) Other Direct Operating Expenses.

Cash and/or in-kind match may be required for all applicants. Additional information is available in the grant application kit.

The minimum amount an applicant may apply for is $20,000 for the contract term.

Rules for the Sexual Assault Prevention and Crisis Services (SAPCS) Program can be found in Title 1 Texas Administrative Code, Part 3, Chapter 62 (Posted for Review and Comment). Availability of funds is subject to and based upon legislative appropriation.

To obtain a grant application kit or for more information please go to the agency website at www.oag.state.tx.us or contact Carrie Cothran-Williams at carrie.cothran-williams@oag.state.tx.us or (512) 936-1661.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502167
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 27, 2005

♦ ♦ ♦

Crime Victim Services Division - Victim Coordinator and Liaison Grants Program Funding Notice

The Office of the Attorney General (OAG), Crime Victim Services Division (CVSD) is accepting applications for crime victim related programs under the Victim Coordinator and Liaison Grant (VCLG) Program. The grant term will be September 1, 2005 through August 31, 2006.

Letters of Intent to apply for this grant program are required. Applications will not be considered if a letter of intent is not submitted by the deadline. The letters of intent must be received no later than 5:00 p.m. on June 20, 2005. The letters of intent may be faxed, e-mailed, or mailed to the OAG.

Complete grant applications (which includes all required attachments) must be received by the OAG, CVSD via e-mail and hard copy no later than 5:00p.m. on July 8, 2005. One original complete grant application and three (3) complete hard copies must be mailed and one (1) copy must be e-mailed. A hard copy alone or an electronic copy alone will not be accepted as a complete application. Attachments or documents that have to be signed do not have to be e-mailed.

The address to mail the letter of intent and the complete application is Crime Victim Services Division, Office of the Attorney General, P.O. Box 12548, Mail Code 005, Austin, Texas 78711-2548, Attn: GRANT APPLICATIONS. The fax number to fax the letter of intent is (512) 936-1650. The e-mail address to e-mail the letter of intent and the complete application is cvsgrants@oag.state.tx.us.

Eligible applicants include local prosecutorial and law enforcement agencies that are local units of government.

Eligible projects include the following: (1) Crime Victim Coordinator for a local prosecution agency; or (2) Crime Victim Liaison for a local law enforcement agency.

Eligible cost categories include the following: (1) Salary; (2) Fringe Benefits; (3) Professional and Consultant Services; (4) Travel; (5) Equipment; (6) Supplies; and (7) Other Direct Operating Expenses.

Cash and/or in-kind match may be required for all applicants. Additional information is available in the grant application kit.

The minimum amount an applicant may apply for is $20,000 for the grant term.

Rules for the Victim Coordinator and Liaison Grant Program can be found in Title 1 Texas Administrative Code, Part 3, Chapter 60 (Posted for Review and Comment). Availability of funds is subject to and based upon legislative appropriation.

To obtain a grant application kit or for more information please go to the agency website at www.oag.state.tx.us or contact Reedy Spigner at reedy.spigner@oag.state.tx.us or (512) 936-1653.

For information regarding this publication, contact A.G. Younger, Agency Liaison, at (512) 463-2110.

TRD-200502166
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 27, 2005

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Licensing and Regulation (TDLR), announces the issuance of **Request for Proposals (RFP) #303-5-11136**. TBPC seeks a three year lease of approximately 100 parking spaces in Austin, Travis County, Texas.

The deadline for questions is June 17, 2005 and the deadline for proposals is June 21, 2005 at 3:00 P.M. The award date is July 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=59201.

TRD-200502151
Kenneth Ming
Purchaser
Texas Building and Procurement Commission
Filed: May 27, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 20, 2005, through May 26, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC

§§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 1, 2005. The public comment period for these projects will close at 5:00 p.m. on July 1, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Oiltanking Beaumont; Location: The project is located on the Neches River, at the Oiltanking Beaumont Facility, approximately on half mile south of Beaumont, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 399919; Northing: 3322156. Project Description: The applicant proposes to construct a new 40-foot by 30-foot barge dock. Approximately 100,000 cubic yards of material will be excavated to -15 feet mean low tide and placed in USACE Placement Area #24. Additionally, a new loading platform and nine barge breasting dolphins will be installed. The project will impact approximately 3.5 acres of herbaceous wetlands. The applicant proposes to compensate for wetland impacts by purchasing credits from the Neches River Cypress Swamp Mitigation Bank at a ratio of 3:1. CCC Project No.: 05-0269-F1; Type of Application: U.S.A.C.E. permit application #21826(04) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at 512/475-0680.

TRD-200502200

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: June 1, 2005

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Texas Board of Professional Engineers

Policy Advisory Opinion Regarding Building Design

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby presents the following Draft Policy Advisory Opinion regarding Building Design. The Board, upon a written request to issue a policy advisory regarding the engineering aspects of building design, has developed a stakeholder process to gather information from professional engineers, and consultants and other interested parties. The following policy advisory, "Policy Advisory Opinion Regarding Building Design," was written using stakeholder comments and is being posted here for public comment. The Board has not ratified the policy advisory opinion as yet. Comments received during the posting period will be considered for inclusion in the final version of the policy advisory that will be presented to the Board for ratification during a regularly scheduled meeting of the Board. Comments should be directed to:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

Executive Summary: The Texas Board of Professional Engineers (Board) has been asked to determine if the practice of engineering includes comprehensive and complete design of buildings by a competent engineer without the services of an architect. The Board has determined pursuant to the Advisory Opinion process outlined in Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter M, based on present statute and rules, in addition to Attorney General opinion DM-161, that the design of buildings is an element of engineering. The Board believes that the statute allows an engineer to perform building design with or without the involvement of an architect. The Board does, however, recognize that architects have broad authority to manage and oversee building projects, which may include building design. Nothing in this opinion is intended to limit architects ability under their statutory authorization. However, building design is also considered engineering and therefore may be performed exclusively by a licensed professional engineer competent in this field.

Discussion: The statute under Texas Occupations Code - Title 6, Subtitle A, Chapter 1001 (§1001.003) also known as the Texas Engineering Practice Act (Act) specifies that design is the practice of engineering and that a building is listed in conjunction with design under this section of the law. This opinion is based on the information contained in the Act as it relates to engineers, while not prohibiting building design by architects who are bound by the laws and rules of the Texas Board of Architectural Examiners (TBAE). First, the statute identifies what is engineering and an excerpt from the beginning of the law, in section §1001.003 explains, in part: (bold added for emphasis)

Section 1001.003 Practice of Engineering

(c) The practice of **engineering includes:**

(10) a service, **design,** analysis, or other work performed for a public or private entity **in connection with a** utility, structure, **building,** machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

Since the design of buildings has been identified as engineering, the buildings can be grouped into public works and private works, which are mentioned in various sections of the Act. This separation allows for further clarification of applicable law as it relates to these two categories. Engineering aspects of a public works project must be designed and constructed under the supervision of a licensed professional engineer, unless exempted under the Act.

When is building design exempted under the Act?

Under the Act there are several sections that provide exemptions from the license requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. There is also a section of the Act in §1001.056 that describes

building projects for the private sector and defines when an engineer is not required to be involved with the building project.

Legislative Intent

Under §1001.004(b) of the Act, there is a description of the legislative purpose and intent as follows:

(b) The purpose of this chapter is to:

(1) protect the public health, safety, and welfare;

(2) enable the state and the public to identify persons authorized to practice engineering in this state; and

(3) fix responsibility for work done or services or acts performed in the practice of engineering.

In addition to specifying the purpose and intent of the statute, there are sections that also allow other individuals to perform their jobs without being in violation of the Act. In other words, architects may design buildings without creating a situation where there would necessarily be a violation of the Act, however they would still be bound by the laws and rules of the TBAE, unless exempted. §1001.004(e) of the Act addresses this issue:

(e) This chapter does not:

(1) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Legal Interpretation

The Board has the authority to issue an advisory opinion as stated in §1001.601 but, under §1001.603, it does not affect the authority of the attorney general to issue an opinion as authorized by law. There exists an Attorney General opinion relating to architecture that was requested by the Executive Director of TBAE. In Opinion DM-161 dated August 27, 1992, Attorney General Dan Morales indicated that the professions of architects and engineers overlap. In that opinion, there is reference to the fact that the Board of Architectural Examiners prepared a report to assist in sunset review and recognized that licensed engineers were authorized to prepare building designs under the engineer's licensing statute. In summary, General Morales denotes that the statute regulating the practice of architecture, does not bar a licensed professional engineer from preparing plans and specifications for a building. In other words, the professional engineer is not prohibited from being the design professional in construction or modification of buildings, as long as the engineer has achieved competence in the field in which he practices.

TRD-200502193
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 1, 2005

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Policy Advisory Opinion Regarding Construction Materials Engineering

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Construction Materials Engineering. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of transportation planning, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The following Policy Advisory, "Policy Advisory Regarding Construction Materials Engineering", was accepted by the Texas Board of Professional Engineers on May 19, 2005 in a public meeting.

Executive Summary: The assessment of a construction material for quality, appropriateness and acceptability is considered by the Board to be an engineering activity. These Construction Materials Engineering (CME) activities must be performed by licensed professional engineers. Construction materials testing (CMT), within the context of CME includes collecting samples, performing well-defined test procedures, and reporting of data. In certain situations, performing tests and construction materials sampling using well-defined engineering specifications may not be considered engineering activities.

Discussion: On construction projects, engineers are called upon to assess the quality, appropriateness and acceptability of the materials that are used. These assessments are known collectively as CME. The CME includes the determination of the scope and procedures of testing for the project, the supervision of testing, and the analysis of test results for construction material acceptance purposes or for use in engineering recommendations. Although we most commonly associate CME with the analysis of concrete and soil, CME is conducted on any material used in construction including but not limited to timber, asphaltic concrete, steel, selected fill materials, recycled materials, aggregates, epoxies, and polymers.

Because it is engineering, CME must be personally performed by a licensed engineer or be directly supervised by a licensed engineer, and can only be offered to the public in full conformance with the Texas Engineering Practice Act (Act). Any CME activities that are contracted by a political subdivision of the State of Texas or an agency of the state, or on the political subdivision or agency's behalf, must be acquired in conformance with the Professional Services Procurement Act, Article 2254.004 of the Texas Government Code.

The CMT, within the context of CME includes collecting samples, performing well-defined test procedures, and reporting of data. In certain situations, performing tests and sampling by using well-defined engineering specifications may not be considered engineering activities. However, if analysis of test data is done or a determination is made that a material is acceptable, these activities would be considered to be CME and require a licensed professional engineer. Because the engineer is responsible for accepting the public works project, acceptance or rejection of materials or work, the direct supervision by an engineer of CMT for those acceptance decisions is needed.

Public Works: When constructing public works, the state or political subdivision of the state must ensure that the engineering construction is performed under the direct supervision of a licensed engineer (Sec. 1001.407, Occupations Code). This supervision must include the direct supervision of materials testing and engineering necessary and appropriate for verification of compliance with construction plans and acceptance of the project by the public owner.

A licensed professional engineer must directly supervise any element of acceptance testing, from data collection to final determination. When engineers are hired for these services, they must be retained under the Professional Services Procurement Act (PSPA).

The CMT services unrelated to acceptance testing might be acquired using other purchasing procedures provided the CMT services do not include any CME function. For public entities with staff engineers who

make acceptance decisions, the engineers must be in a position to determine if the testing and inspection services are properly performed at a frequency that provides confidence that the materials and work meet (or reasonably conform in some cases) the contract requirements or standards of practice. This requires reviewing qualifications, monitoring inspection and testing services and review of test and inspection data.

The validity of an engineering judgment in the construction materials area is integrally tied to the validity of test data, which is in turn directly related to training of technical staff, performance of testing equipment, and other elements associated with an accredited engineering laboratory. Therefore, by the standard established by Sec. 1001.407, Occupations Code, CMT conducted for the purpose of verification and acceptance of a facility is considered a CME function.

The Board recognizes as a specific exception for CMT conducted under a federally approved quality assurance program (QA) specifically governing the Texas Department of Transportation, provided that alternate methods of ensuring appropriate engineering direct supervision are in place. In addition, CMT services used for a contractor's internal quality control purposes only and are not used by the owner for verification and/or acceptance purposes may not be considered engineering.

Frequently Asked Questions:

1. Can a public entity solicit bids and use a price in the selection screening process for CME services?

No. Under the PSPA, public entities must select CME engineers based on qualifications and demonstrated competence - not price. In fact, engineers cannot provide pricing information in the initial stages of selection without facing possible Board sanctions. However, once the most qualified CME provider is chosen, the public entity may negotiate a fair price for the work. If a price cannot be reached, the public entity may repeat the negotiations with the next most highly qualified provider of services until a contract is reached.

2. Can a public entity solicit bids and use a price in the selection screening process for CMT services?

Yes, but only if the CMT services meet two critical conditions:

The provider's services must be clearly limited to collection of samples and performing tests defined by a professional engineer in the project specifications, and;

The public entity's engineer who is competent in CME must also directly supervise any CMT that is to be used for acceptance purposes.

The scope of services on a CMT activity is very narrow. For example, they cannot include engineering supervision services, provision of sealed reports, review and sealing of reports produced by others, or evaluation of test data. Some standard testing cannot be considered CMT because of its engineering components or if there are requirements for an engineer in the test procedure. The following elements are considered engineering and would be subject to the PSPA:

Evaluation of CMT results for an acceptance or rejection decision is engineering.

The testing services are CME when the owner does not provide an engineer for direct supervision of the construction phase.

The testing services are CME when the provider submits the results of their work to the construction contractor for acceptance or rejection.

To ensure proper documentation, the Board recommends that the engineer responsible for receiving CMT results and making acceptance and rejection decisions be identified in project documentation.

3. Many public owners ask construction contractors to provide CME services. The results of the tests are submitted to the public owner. If the contractor elects to provide these services, what rules must be followed?

The contractor must follow the PSPA when acquiring CME under these circumstances. One of the reasons materials testing and engineering are conducted on public projects is to meet the requirements of Section 1001.407, Occupations Code. This section requires the public owner to ensure that a licensed engineer is directly supervising the engineering construction - including supervision of the acceptance testing. Engineers who are asked to provide CME services for acceptance purposes may not provide prices to the contractor, since the contractor is essentially authorized to fulfill legal requirements as an extension of the owner.

4. What rules must the contractor follow when acquiring CMT services that are strictly for contractor quality control and not for acceptance testing?

This contracting arrangement is most common when tests are being performed in support of contractor quality control in Quality Assurance/Quality Control (QA/QC) contracts. The contractor may utilize price in the initial step of the selection process, and an engineer may provide prices provided there are no engineering services required.

5. Can a private owner use price in the selection process for providers of CMT or CME services?

Yes. There are no restrictions on the use of price, but the Board strongly urges all consumers of engineering services to use demonstrated qualifications and experience to select the service providers.

6. Can a non-engineer provide CME services on a private project?

No. CME is an engineering service and can only be provided by a licensed professional engineer who is a full-time employee of the company offering the services.

TRD-200502195
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 1, 2005

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Policy Advisory Opinion Regarding Transportation Planning

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Transportation Planning. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of transportation planning, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The following Policy Advisory, "Policy Advisory Regarding Transportation Planning", was accepted by the Texas Board of Professional Engineers on May 19, 2005 in a public meeting.

Executive Summary: Transportation planning involves the use of many types of preliminary data collection studies such as constraint mapping, ridership studies, traffic counts, non-engineering environmental impact studies and public opinion polls. These types of activities are not considered engineering. However, when the collected

data is analyzed and resultant specific recommendations are made based on the interpretation of that engineering data, these activities are required to be performed by professional engineers, subject to the exemptions of the Texas Engineering Practice Act (Act).

Discussion: Sections 1001.003(c)(1), (2) and (3) of the Act state that the practice of engineering includes:

"consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;."

"design, conceptual design, or conceptual design coordination of engineering works or systems."

"development or optimization of plans and specifications for engineering works or systems."

The Texas Board of Professional Engineers (Board) has determined that transportation planning activities that require detailed cost estimates, engineering designs or comparisons, and other activities that require the application of engineering principles and the interpretation of engineering data, are the practice of engineering and must be designed and/or supervised by a licensed engineer for public works (subject to Section 1001.053 and 1001.407 of the Act) and any designs performed by a licensed engineer for private works (not subject to the Exemptions of Subchapter B of the Act). The Board recognizes that early studies conducted by federally mandated planning agencies using generic population and other broad parameters for the purpose of funding allocation are not engineering studies and are usually performed by non-engineering professionals.

Tasks associated with transportation planning that the Board considers to be tasks that must be performed by or conducted under the supervision of a licensed professional engineer include but are not limited to:

Facility planning, recommendations, location and design.

Alignment and design comparisons and related interpretation of engineering data.

Feasibility studies and modeling of transportation infrastructure options.

Recommendations and specifications regarding engineered traffic control options and technologies.

Design and construction monitoring of roadways, railroads and related transportation structures and systems.

Siting and right-of-way specification of engineered transportation management measures.

Detailed cost estimates.

Texas licensed engineers are required to prepare the specifications, cost estimates, designs and perform engineering construction supervision of public works projects not exempted by the Act. Licensed professional engineers are required to perform the design of the listed activities for private works not exempted by the Act.

TRD-200502194
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 1, 2005

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding A. Schulman, Inc., Docket No. 2003-0156-IWD-E on May 25, 2005, assessing $21,723 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at (512) 239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200502137
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 2005

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on May 25, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Steve Silva dba Steve's Auto Works and Sales; SOAH Docket No. 582-05-4162 TCEQ Docket No. 2003-1529- AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Steve Silva dba Steve's Auto Works and Sales on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502138
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 2005

♦ ♦ ♦

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on May 26, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Fuel Brokers, Inc; SOAH Docket No. 582-05-3401; TCEQ Docket No. 2004-0171-IHW-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Fuel Brokers, Inc on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200502139

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 26, 2005

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Office of the Governor

Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Governor's Criminal Justice Division (CJD) is soliciting regional applications for projects that promote greater accountability in the juvenile justice system for the federal fiscal year 2006 grant cycle.

Purpose: The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

Available Funding: Federal funds are authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796ee et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

Required Match: Grantees must provide matching funds of at least ten percent (10%) of total project expenditures. This requirement must be met through cash contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3, and all statutes, regulations, and guidelines applicable to this funding. In addition grantees must comply with the federal regulations contained in 28 C.F.R. §95.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) admission fees or tickets to any amusement park, recreational activity or sporting event;

(2) construction costs;

(3) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(4) fundraising;

(5) legal services for adult offenders;

(6) lobbying;

(7) medical services;

(8) membership dues for individuals;

(9) overtime pay;

(10) promotional gifts;

(11) proselytizing or sectarian worship;

(12) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(13) vehicles or equipment for government agencies that are for general agency use;

(14) weapons, ammunition, explosives or military vehicles;

(15) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (supplanting); and

(16) any portion of the salary of, or any other compensation for an elected or appointed government official, except in the case of a juvenile court or drug court.

Eligible Applicants: Councils of Governments.

Requirements:

(1) Applicants will address one or more of the following JABG Purpose Areas:

(a) Purpose Area 1: Developing, implementing and administering graduated sanctions for juvenile offenders.

(b) Purpose Area 2: Building, expanding, renovating, or operating temporary or permanent juvenile corrections, or detention facilities, including the training of personnel.

(c) Purpose Area 3: Hiring juvenile court judges, probation officers, and court-appointed defenders and special advocates, and funding pretrial services (including mental health screening and assessment) for juvenile offenders, to promote the effective and expeditious administration of the juvenile justice system.

(d) Purpose Area 4: Hiring additional prosecutors so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced.

(e) Purpose Area 5: Providing funding to enable prosecutors to address drug, gang, and youth violence problems more effectively and for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders.

(f) Purpose Area 6: Establishing and maintaining training programs for law enforcement and other court personnel with respect to preventing and controlling juvenile crime.

(g) Purpose Area 7: Establishing juvenile gun courts for the prosecution and adjudication of juvenile firearms offenders.

(h) Purpose Area 8: Establishing drug court programs to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to integrate administration of other sanctions and services for such offenders.

(i) Purpose Area 9: Establishing and maintaining a system of juvenile records designed to promote public safety.

(j) Purpose Area 10: Establishing and maintaining interagency information-sharing programs that enable the juvenile, and criminal justice systems, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts.

(k) Purpose Area 11: Establishing and maintaining accountability-based programs designed to reduce recidivism among juveniles who are referred by law enforcement personnel or agencies.

(l) Purpose Area 12: Establishing and maintaining programs to conduct risk and need assessments of juvenile offenders that facilitate the effective early intervention and the provision of comprehensive services, including mental health screening and treatment and substance abuse testing and treatment, to such offenders.

(m) Purpose Area 13: Establishing and maintaining accountability-based programs that are designed to enhance school safety.

(n) Purpose Area 14: Establishing and maintaining restorative justice programs.

(o) Purpose Area 15: Establishing and maintaining programs to enable juvenile courts and juvenile probation officers to be more effective and

efficient in holding juvenile offenders accountable and reducing recidivism.

(p) Purpose Area 16: Hiring detention and corrections personnel, and establishing and maintaining training programs for such personnel, to improve facility practices and programming.

(2) In addition, all juvenile justice projects will address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

(a) Family Stability--Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention--Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol including control, prevention, and treatment.

(c) Education--Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC)--Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact--Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention--Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access--Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training--Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects will begin on or after September 1, 2005, and will expire on or before August 31, 2006.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's web site at http://www.governor.state.tx.us/divisions/cjd/formsapps/view.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to the provision of services.

Closing Date for Receipt of Applications: Submit all applications electronically to the Office of the Governor, Criminal Justice Division via email at cjdapps@governor.state.tx.us on or before June 30, 2005.

Selection Process: Applications will be reviewed by CJD staff members or a review group selected by the Executive Director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Aimee Snoddy at asnoddy@governor.state.tx.us or (512) 463-1919.

TRD-200502168

David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: May 31, 2005

♦ ♦ ♦

Texas Health and Human Services Commission

Correction of Public Notice

This notice was previously published in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3143) and is being resubmitted due to inadvertently leaving off two counties, Travis and Maverick from the list of non-publicly owned hospitals.

The Texas Health and Human Services Commission announces its intent to resubmit Transmittal Number TX 05-001, Amendment Number 698, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

Amendment Number 698 provides for Upper Payment Limits (UPL) payments for inpatient and outpatient services providers by non-publicly owned hospitals in Bexar, Hidalgo, Maverick, Midland, Montgomery, Potter, Randall, Travis, and Webb counties for services provided to Medicaid patients. The supplemental payments shall not exceed the difference between total annual Medicaid payments and the federal upper payment limits established in 42 CFR 447.272. As a result, the State seeks to ensure that Medicaid payments are commensurate with Medicare payments and/or payment principles.

The proposed amendment is to be effective June 11, 2005, and is expected to increase the amount of federal matching funds to the State. The proposed amendment is estimated to result in increased annual aggregate expenditures of $33,687,741 with increased federal matching funds of $20,505,728 for State fiscal year 2005, and $128,083,600 with increased federal matching funds of $77,695,511 for State fiscal year 2006.

If additional information is needed, please contact Arnulfo Gomez by telephone at (512) 491-1166 or by e-mail at arnulfo.gomez@hhsc.state.tx.us.

TRD-200502190
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 1, 2005

♦ ♦ ♦

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultant services to assist in the development of a healthcare delivery model for foster children (RFP #529-05-207). HHSC seeks to contract with a single qualified vendor to fulfill the requirements pursuant to this RFP.

The primary objectives for this procurement are to assist HHSC in developing a healthcare model for foster care children that will:

Result in improved delivery of health care services through continuous, coordinated delivery through a single medical home;

Create cost avoidance opportunities in Medicaid services through those clients receiving duplicative health care services and prescription drugs; and

Seek revenue enhancements through consolidation or coordination of state and federal funding sources and services.

The RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on June 13, 2005.

The successful contractor will assist in the procurement design and development of a healthcare delivery model for children in foster care. This assistance may include, but is not limited to:

Assisting HHSC in drafting and/or reviewing sections of the draft Request for Proposal (RFP) that pertain to the health care delivery model for children in foster care;

Assisting HHSC in the development of the final RFP;

Facilitating discussions with HHSC, the Department of Family and Protective Services (DFPS) and/or the Department of State Health Services (DSHS) to determine solutions to operational issues, including coordination of services and service planning;

Facilitating discussions with HHSC, DFPS and/or DSHS to identify possible funds for integration or coordination to enhance the service array for children in foster care;

Assisting HHSC in responding to numerous vendor questions on the draft and final RFP, including assisting in determining solutions to issues brought up in vendor questions;

Assisting HHSC in developing and drafting a Medicaid 1915(b) waiver to implement the health care delivery model for children in foster care;

Assisting HHSC in developing and drafting a Medicaid 1915(c) waiver for community-based treatment alternatives for children with severe emotional disturbances;

Assisting HHSC in determining how the 1915(b) and 1915(c) waivers will be coordinated in the health care delivery model for children in foster care; and

Assisting in responding to questions from the Centers for Medicare and Medicaid Services (CMS) on the waivers.

The Health and Human Services Commission's Sole Point-Of-Contact for this procurement is:

Tim Seelig, Procurement Project Manager

Texas Health and Human Services Commission

P.O. Box 85200-5200

Austin, Texas 78708-5200

(512) 491-1328

tim.seelig@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 PM Central Time on June 22, 2005. HHSC will post all written questions received with HHSC's responses on its website on June 30, 2005, or as they become available. All proposals must be received at the above-referenced address on or before 3:00 PM Central Time on July 13, 2005. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200502201
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 1, 2005

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Texas Department of Housing and Community Affairs

Request for Qualifications for Interest Rate Swap Advisors

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing this Request for Qualifications ("RFQ") from firms interested in providing interest rate swap advisory services from time to time for one or more of its single family mortgage revenue bond issues, single family commercial paper issues and/or multifamily mortgage revenue bond issues. TDHCA desires to select an Interest Rate Swap Advisor ("Swap Advisor") primarily for monitoring interest rate swaps used to hedge TDHCA's single family variable rate mortgage revenue bond issues. The entity selected as a result of this RFQ process will be primarily responsible for post-execution monitoring services.

Responses to the RFQ must be received at TDHCA no later than 4:00 P.M. C.S.T. on Friday, July 1, 2005. To obtain a copy of the RFQ, please fax your request to the attention of Byron V. Johnson at (512) 475-3362 or visit the Bond Finance Division web page at www.tdhca.state.tx.us.

TRD-200502192
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 1, 2005

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Request for Qualifications for Reinvestment Agents

The Texas Department of Housing and Community Affairs ("TDHCA") is issuing this Request for Qualifications ("RFQ") from firms interested in providing reinvestment services from time to time for one or more of its single family mortgage revenue bond issues, single family commercial paper issues and/or multifamily mortgage revenue bond issues. TDHCA desires to create a pool of approved Reinvestment Agents ("Agents") from which to select in conjunction with the sale of single family and multifamily municipal bond issues and/or other financing opportunities. TDHCA reserves the right to select any firm for any particular financing project from the approved list of participants.

Responses to the RFQ must be received at TDHCA no later than 4:00 P.M. C.S.T. on Friday, July 1, 2005. To obtain a copy of the RFQ, please fax your request to the attention of Byron V. Johnson at (512) 475-3362 or visit the Bond Finance Division web page at www.tdhca.state.tx.us.

TRD-200502191
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 1, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by MEMBER-HEALTH, INC., a foreign Life, Accident, and/or Health company. The home office is in Solon, Ohio.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200502196
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 1, 2005

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Texas Lottery Commission

Instant Game Number 576 "Cash Cards"

1.0 Name and Style of Game.

A. The name of Instant Game No. 576 is "CASH CARDS". The play style is "cards".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 576 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 576.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A SYMBOL, K SYMBOL, Q SYMBOL, J SYMBOL, 10 SYMBOL, 9 SYMBOL, 8 SYMBOL, 7 SYMBOL, 6 SYMBOL, 5 SYMBOL, 4 SYMBOL, 3 SYMBOL, 2 SYMBOL, 16 SYMBOL, 17 SYMBOL, 18 SYMBOL, 19 SYMBOL, 20 SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $50,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 576 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 576 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (576), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 576-0000001-001.

L. Pack - A pack of "CASH CARDS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH CARDS" Instant Game No. 576 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH CARDS" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. In play style 1, the player must scratch the YOUR CARDS in each hand. If a player reveals 2 matching cards within a hand the player will win the prize #1 shown for that hand. In play style 2, the player must add the two (2) YOUR CARDS in each hand. If the total of the YOUR CARDS is higher than the DEALER'S TOTAL, the player will win the PRIZE #2 shown for that hand. J, Q, K = 10, A = 11. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than four like non-winning prize symbols on a ticket.

C. No duplicate Your Cards hands in any order on a ticket.

D. There will be no ties between the total of Your Cards and the Dealer's Total in a hand.

E. The Your Cards play spots will total no less than 12 on non-winning hands.

F. No Your Hand will contain two Aces.

G. A given hand will never win by getting a pair of Your Cards and beating the Dealer's Total on a ticket.

H. There will never be more than one 10, Jack, Queen and King in the same hand (for example, no Ten and King, etc.).

I. No more than 3 pairs of non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH CARDS" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH CARDS" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $576 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH CARDS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16576, Austin, Texas 78761-6576. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $576 from the "CASH CARDS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $576 from the "CASH CARDS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 576. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 576 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	806,400	6.25
$10	369,600	13.64
$15	134,400	37.50
$20	100,800	50.00
$50	67,200	75.00
$100	7,896	638.30
$500	588	8,571.43
$1,000	368	13,695.65
$5,000	50	100,800.00
$50,000	6	840,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.39. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 576 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 576, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200502136
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 26, 2005

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North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firm(s) to implement a Low Cost Signal Improvement Program/Thoroughfare Assessment Program Phase 3.2, which will include retiming of approximately 1800 signalized intersections, repair and implementation of vehicle detectors and deployment of light emitting diode traffic signals lamps wherever required in the Dallas Fort-Worth Non-Attainment Area. The regionwide thoroughfare assessment will include establishment of a baseline analysis, implementation of signal retiming, performing a subsequent analysis (improved conditions) and preparing an executive summary of the program. Engineering services are anticipated for this effort.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Thursday, July 14, 2005, to Natalie Bettger, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267. Questions concerning the Instructions For Proposals or the Scope of Services should be submitted to Ken Kirkpatrick, Senior Program Manager, by email at kkirkpatrick@nctcog.org by Wednesday, June 22, 2005. A Pre-Proposal Conference will be held on Thursday, June 30, 2005, at 2 p.m., at the NCTCOG offices to provide an overview and answer questions regarding the RFP.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49,

Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200502202

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: June 1, 2005

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Texas Parks and Wildlife Department

Notice of Intent to Conduct Restoration Planning

Energytec, Inc. crude oil spill Titus County Texas, November, 2004: Notice of Intent to Conduct Restoration Planning

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), Texas General Land Office (GLO), and the United States Fish and Wildlife Service (USFWS) of the United States Department of the Interior

ACTION: Notice of Intent to Conduct Restoration Planning Pursuant to the Oil Pollution Act of 1990 (OPA) for the impacts from the November, 2004 crude oil discharge into an un-named tributary leading to Oliver Lake and the Sulphur River in Titus County, Texas.

SUMMARY: Natural Resource Trustees (Trustees) are designated pursuant to OPA, 33 U.S.C. §2706(b), Executive Order 12777, and the National Contingency Plan, 40 C.F.R. §300.600 and 300.605, with responsibility to conduct natural resource damage assessments on behalf of the public when discharges of oil affect natural resources and services.

On or about November 15, 2004 a ruptured transfer line(s) leading to an injection well and storage tank(s) broke in the Hoffman-Bankhead Unit located on the Hearts Bluff Game Ranch northeast of the city of Talco, Titus County, Texas resulting in an unauthorized discharge of crude oil to an un-named tributary of Oliver Lake and the Sulphur River. Approximately 8,400 gallons of crude oil were discharged into the creek and adjacent riparian habitat. Oil was observed at the discharge point and extended 0.50 miles downstream in the un-named tributary to Oliver Lake and the Sulphur River. Heavy rains and localized flooding spread oil downstream in the un-named tributary to Oliver Lake and adjacent bottomland hardwoods. The oiling of habitat ranged from light to very heavy bands of oil on the banks, snags and vegetation adjacent to and in the creek. In some case oil bands were observed four feet high on trees.

Trustees for this incident are TPWD, TCEQ, GLO, and USFWS. The Trustees have determined that the incident warrants conducting a natural resource damage assessment (NRDA). This notice serves to inform the public that the Trustees are proceeding with the assessment, including restoration planning, and will subsequently seek public input for planning restoration for the injuries resulting from this oil spill. This assessment will be conducted in accordance with the NRDA regulations for oil spills at 15 C.F.R. §§990.10 et seq.

ADDRESSES: A copy of this Notice of Intent and further information relating to the assessment and restoration planning may be obtained by contacting: Charles Wood, Natural Resource Damage Assessment Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, Phone: (512) 912-7155, e-mail: charles.wood@tpwd.state.tx.us.

SUPPLEMENTARY INFORMATION: In support of their decision to proceed with the assessment and issue this notice, the Trustees have made several determinations as required by 15 C.F.R. §990.41. First, the Trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act. The Trustees have determined that the release of approximately 8,400 gallons of crude oil, which resulted in oil exposure of the navigable waters of the United States and Texas, constituted an incident as defined in 15 C.F.R. §990.30. This incident was not permitted under state, federal or local law. Using information gathered during preassessment activities, the Trustees have determined that natural resources under their trusteeship have been injured as a result of this incident. The Trustees have conducted initial surveys of the areas where spill impacts were observed in order to document the areas oiled, the degree of oiling and whether any impacts or mortality could be observed on either the flora or fauna of the area. Based on data collected and observations made during the initial surveys, the Trustees have made the further determination required by 15 C.F.R. §990.42(a), that it is appropriate to proceed with restoration planning for this incident. Restoration planning is necessary since injuries have resulted from the incident. The Trustees base this determination upon data that demonstrates that natural resources and services have been injured. Natural resources or their services injured as a result of the spill and spill response include, but are not limited to, riparian habitat, wetland habitats and surface waters of the of the un-named tributary to Oliver Lake and the Sulphur River and biota which would include fish, birds, other wildlife species and benthic communities.

Initial response actions by Energytec Inc. focused on the use of heavy equipment to remove oiled vegetation and the burying of standing oil in upland and aquatic environments. Where these actions were undertaken, environmental damage has occurred resulting in injuries to sediments, soils, terrestrial and aquatic habitats, fisheries and wildlife. On or about December 16, 2004 response actions were transferred from Engergytec Inc. personnel to Titan Engineering Inc, Hull's Environmental Service and BNC Environmental Services, collectively referred to as the environmental contractors. Secondary response actions initiated by the environmental contractors included herding oil to collection points were it was removed using vacuum trucks and absorbent pads. Areas of entrained oil may also be further remediated by a methodology that will be determined at a future time. The response actions described have not adequately addressed, or are not expected to address, the potential injuries from the incident. Therefore, restoration planning is warranted.

The Trustees are conducting restoration planning since there are feasible primary and/or compensatory restoration actions available to address the potential injuries. There are opportunities available in or near the impacted area to restore or compensate for injury to fringe wetlands, riparian and other shallow water resources.

Finally, restoration planning is being undertaken since assessment procedures exist to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. The Trustees have determined that assessment procedures are available that are appropriate for this incident and that meet the applicable standards for such methods set forth in 15 C.F.R. §990.27. The Trustees intend to use the results of site monitoring, photographic documentation, and

geographical information systems evaluation in conjunction with Habitat Equivalency Analysis, as a resource-to-resource approach, to determine and quantify injury levels as well as scale appropriate restoration actions.

The Trustees have begun compiling applicable documents into an administrative record that explains the assessment and restoration decision-making process for this incident. Information regarding public access to this record may be obtained by contacting: Raenell Silcox, Staff Attorney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, e-mail: raenell.silcox@tpwd.state.tx.us.

For further information relating to this notice, contact: Charles Wood, Trustee Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, e-mail: charles.wood@tpwd.state.tx.us. Comments received will be considered in developing a draft final restoration plan and environmental assessment for the incident.

TRD-200502171
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: May 31, 2005

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Public Utility Commission of Texas

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On May 24, 2005, TalkingNets Holdings-Texas, LP filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60468. Applicant intends to relinquish its certificate.

The Application: Application of TalkingNets Holdings-Texas, LP to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31131.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 15, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31131.

TRD-200502144
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2005

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Notice of Application for Service Area Exception Within Wood County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 24, 2005, for service area exception within Wood County, Texas.

Docket Style and Number: Application of Wood County Electric Cooperative, Inc. for Service Area Exception within Wood County. Docket Number 31135.

The Application: Wood County Electric Cooperative, Inc. (WCEC) requested a service area exception to provide service to a single customer, the Staring Residence. WCEC has facilities located approximately 350 feet from the residence. The area is dually certified to WCEC, Southwestern Electric Power Company (SWEPCO) and Upshur Rural Electric Cooperative, Corp. (URECC). SWEPCO and URECC agree to the service area exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than June 20, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31135.

TRD-200502179
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2005

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 24, 2005, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Resaca de la Palma State Park). Docket Number 31136.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from the Texas Parks & Wildlife Department to provide electric utility service to the proposed Resaca de la Palma State Park. The total property consists of two parcels of land totaling 1,100.54 acres. The estimated cost to BPUB to provide service to this proposed area is $97,138.35. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 20, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31136.

TRD-200502180
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2005

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 25, 2005, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Resaca Del Valle Estates). Docket Number 31154.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request to provide electric utility service to 69.91 acres of undeveloped land for a proposed subdivision. The estimated cost to BPUB to provide service to this proposed area is $131,459.32. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than June 20, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31154.

TRD-200502181
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2005

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Notice of Filing to Discontinue Services Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of SBC Texas' application filed with the Public Utility Commission of Texas (commission) on May 11, 2005 to withdraw services pursuant to P.U.C. Substantive Rule §26.208.

Docket Title and Number: Application of SBC Texas to Withdraw Certain Committed Information Rate (CIR) Options Under OPT-E-MAN℠ Service Pursuant to P.U.C Substantive Rule §26.208(h), Docket Number 31087.

The Application: SBC Texas filed an application to withdraw certain Committed Information Rate (CIR) Options under its OPT-E-MAN℠ Service stating that the service, established in October 2003, was initially tariffed with 24 Committed Information Rate (CIR) bandwidth options per Grade of Service to provide the granularity of bandwidth thought to be required by consumers. Sixteen of the bandwidth options have not been ordered by a customer. Therefore, due to lack of demand for these 16 CIR bandwidth options, SBC Texas' application is to withdraw the following CIR bandwidth options: 15 Mbps, 25, Mbps, 30 Mbps, 40 Mbps, 60 Mbps, 80 Mbps, 125 Mbps, 150 Mbps, 175 Mbps, 200 Mbps, 300 Mbps, 400 Mbps, 600 Mbps, 700 Mbps, 800 Mbps, and 900 Mbps (including both the Bronze and Silver options for each of the CIR speeds listed).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas, by June 30, 2005, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free 1-800-735-2989. All correspondence should refer to Docket Number 31087.

TRD-200502182
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 31, 2005

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on April 20, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition for Expanded Local Calling Service from the Pine Hill Exchange, Project Number 31018.

The petitioners in the Pine Hill exchange request ELCS to the exchanges of Kilgore, Nacogdoches, and Tyler.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)936-7120 or toll free at 1-888-782-8477 no later than June 24, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 31018.

TRD-200502142
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 23, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Cellco Partnership, d/b/a Verizon Wireless' (Verizon Wireless) request for additional telephone numbers in the Granbury rate center.

Docket Title and Number: Petition of Verizon Wireless for Review of Pooling Administrator's Denial of Application for Numbering Resources. Docket Number 31129.

The Application: Verizon Wireless submitted a petition to the Pooling Administrator (PA) to provide it with additional telephone numbers in the Granbury rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 15, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31129.

TRD-200502143
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2005

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Office of the Secretary of State

Notice of Intent Concerning the *Texas Register* Publication

The Office of the Secretary of State ("SOS") is inviting proposals from vendors to print and distribute the paper/hard-copy edition of the *Texas Register* ("*Register*").

The hard-copy *Register* is published weekly (usually 52 issues per year), plus four cumulative indexes, and is mailed each Friday with slight variations due to holidays. A typical issue is 160 pages. Issues may range from approximately 40 pages to more than 300 pages (multiple books). Vendor may view previous issue sizes at http://www.sos.state.tx.us/texreg/issues.shtml. Issue size is determined by number of filings by state agencies with the SOS.

The *Register* is available to the public on the Internet where it is published each Friday free of charge.

http://www.sos.state.tx.us/texreg/issues.shtml

The SOS currently charges a monthly subscription fee of $20 for the paper/hard-copy *Register*.

The SOS intends to discontinue the printing and distribution of paper subscriptions to the *Register* on August 31, 2005. Because there are currently more than 600 subscribers who receive the printed version of the *Register*, the SOS invites proposals from vendors interested in the privatized printing and distribution of a paper subscription service at no cost to the SOS or the State of Texas.

The SOS intends to enter into an agreement with a single vendor for a four year period; September 1, 2005 through August 31, 2009. SOS shall determine the content, format, and publication schedule for the weekly *Register* during the agreement period. The SOS encourages the vendor to use recycled paper.

The SOS will provide to the vendor the following:

* Current subscriber listings on September 1, 2005, including mailing addresses, contact information, and expiration dates. (Vendor will be responsible for maintaining subscriber listings after September 1, 2005.)

* Content for each issue in Adobe Acrobat PDF format, one week before posting same issue on the Internet with slight variations due to filing workload and holidays.

* Refer all subscription requests it receives.

* License to use "*Texas Register*" Trademark.

The current contract specifications for the printing and distribution of the *Register* are available upon request. Refer to "Printing & Distribution of the Texas Register.doc".

All correspondence concerning this topic should be sent to sospurchasing@sos.state.tx.us.

The selected vendor should produce the paper *Register* in substantially the same form as specified in "Printing & Distribution of the Texas Register.doc" Under "Distribution", C. 2, the distribution requirement for interagency mail subscribers will be waived and the vendor may utilize USPS parcel post or better. There are currently no overseas subscribers. The requirement that each issue must be delivered to the US post office on the same day as the date of the issue will remain. Sections "D" through "G" will be waived.

Vendor shall on September 1 of each year notify the SOS of the fee charged for subscriptions, and the number of subscribers and renewals.

Vendor shall provide and deliver to the SOS in Austin, Texas 30 copies of each issue free of charge. These are for SOS internal usage only. Vendor is responsible for supplying back issue requests and lost or damaged issues. The SOS currently maintains 50 copies of each issue for this purpose.

Vendors must demonstrate the following qualifications to be considered:

* Experience marketing publications, with preference to experience with legal and/or government publications.

* Experience in printing and distributing periodical publications and/or time-sensitive materials.

* Experience in subscription management.

* Customer Service available to the public, including toll-free telephone support within Texas.

A vendor's response should address each of the above qualifications, along with proposed subscription fees to be charged to customers (renewal and new) for the term of the contract, any proposed alterations from the current specifications in producing the printed *Register*, and confirm mailing requirements.

The proposal offering the greatest benefit to customers and SOS will determine selection of a vendor. Vendors may propose enhancements such as indexes, complimentary subscriptions to public libraries, a guaranteed subscription rate for a specified term, or waive reimbursement from SOS for the remaining term of any existing subscriptions. Existing pre-paid subscriptions that extend beyond September 1st have an approximate value of $25,000.

The SOS intends to enter into an agreement with the selected vendor for a term of four years, effective September 1, 2005. By giving 90 days written notice to the other party, the SOS or the vendor may terminate a resulting agreement. Following termination of the agreement, the vendor may continue to receive the weekly issue files from the SOS for a rate of $50 per week.

Vendors must send all questions to sospurchasing@sos.state.tx.us by June 24, 2005 and indicate "Texas Register" in the subject line. Questions will be answered as timely as possible, with all questions and corresponding SOS answers posted to the SOS web site at http://www.sos.state.tx.us/texreg/issues.shtml by June 29, 2005.

Proposals must be received by the SOS Purchasing Department no later than July 8, 2005. The cover page (available upon request) should be used to submit a proposal. Proposals must be faxed to (512) 475-2819 or mailed to Secretary of State, P.O. Box 12887, Austin, TX 78711-2887.

The SOS intends to select a vendor by July 15, 2005.

TRD-200502204
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Filed: June 1, 2005

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University of North Texas

Notice - Award of Major Consulting Contract

Description of Activities Consultant Will Conduct:

To assist UNT-System and each institutional entity of which UNT-System is comprised to develop and execute a government relations plan to attract support for research facilities, equipment, technology and programs through federal and other initiatives pertaining, but not limited

to, the Congressional appropriations process and federal funding agencies. The agency shall also assist in, but not limited to the following areas: evaluating research resources; developing concepts and themes for agreed upon research initiatives; formulating strategies and timetables for presentation of research initiatives; assisting in preparation of supporting documentation; coordinating meetings with pertinent representatives and their staffs; serving aas a liaison to funding agencies; preparing testimony for presentation; developing legislative and orther strategies; and monitoring and reporting on government and other programs relevant to research initiatives and other areas of interest to UNT-System and Institutions.

Name and Business Address of Consultant:

Congressional Solutions, Inc.

1530 N. Key Blvd., Suite 523

Arlington, Virginia 22209

Total Value and Beginning and Ending Dates of Contract:

Value: $ 563,333.32

Beginning Date: May 17, 2005

Ending Date: August 31, 2006, with two additional renewal options of twelve months each.

Dates on Which Documents, Films, Recordings, or Reports that Consultant is required to present are due:

Date: Various dates--as requested by Chancellor and in any event not less that quarterly.

TRD-200502156
Sandy Shelton
Contract Administration Manager
University of North Texas
Filed: May 27, 2005

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Bonham, 301 East Fifth Street, Bonham, Texas, 75418, received May 2, 2005, application for financial assistance in the amount of $1,675,000 from the Clean Water State Revolving Fund.

McCoy Water Supply Corporation, 2125 FM 541, McCoy, Texas, 78113, received May 10, 2005, application for financial assistance in the amount of $1,050,000 from the Rural Water Assistance Fund.

TRD-200502203
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: June 1, 2005

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Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

* Dentist

* Employer

* General Public 1

Alternate

* Public Health Care Facility Representative

* Dentist

* Pharmacist

* Employer

* General Public 1

* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at *http://www.twcc.state.tx.us* and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION. Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS. Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

a. Preparation of a suitable agenda.

b. Planning MAC activities.

c. Establishing meeting dates and calling meetings.

d. Establishing subcommittees.

e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS. Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200502183
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: May 31, 2005

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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